MARKETING AGREEMENTS UNDER THE AAA

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MARKETING AGREEMENTS UNDER THE AAA

MARKETING AGREEMENTS UNDER THE AAA

BY

EDWIN G. NOURSE

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DIRECTOR'S PREFACE

This is the fifth of a series of six descriptive and analytical volumes dealing with various phases of work of the Agricultural Adjustment Administration. The other volumes deal with "basic" commodities—wheat, cotton, livestock, tobacco, and dairy products. In a sense, the field of this book is, like the other five, delimited along commodity lines. That is, it deals primarily with "general crops" not included in the "basic" classification. In a broader sense, however, the bounds of the discussion are not drawn along commodity lines but according to the method of "adjustment" used, namely, marketing adjustment under agreements, licenses, and orders rather than production adjustment implemented by processing taxes and rental or benefit payments. Since it examines the use of the former method wherever it was undertaken and since basic commodities were eligible to both methods of treatment, the book is not limited merely to "general crops" but describes also such applications of the marketing agreement and license as were made to wheat, tobacco, dairy products, rice, and peanuts, products which either were included in the original basic group or subsequently were added to that classification by amendment of the act.

The author wishes to make grateful acknowledgment to the many persons, both inside and outside the ranks of the Adjustment Administration staff, who contributed generously of their assistance and criticisms in the preparation of the manuscript. Special acknowledgment is made to Virgil D. Gilman, now of the staff of the Division of

Land Utilization, Resettlement Administration, but a member of our group during the first year of the AAA study.

The book was read in manuscript by Joseph S. Davis of the Food Research Institute and John D. Black of Harvard University who have been associated with me in the conduct of the AAA study and by Leverett S. Lyon as a representative of the regular staff of the Institute of Economics. While their criticisms and suggestions have been of great assistance, the author alone is responsible for the conclusions arrived at.

EDWIN G. NOURSE
Director

Institute of Economics
September 1935

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CHAPTER I

ORIGINS OF THE MARKETING AGREEMENT AND LICENSING PROVISIONS

The Agricultural Adjustment Act of 1933 is generally, and quite properly, regarded as the lineal descendant of the "domestic allotment" plan for the restoration of farm prosperity.[1] Fully four-fifths of the text of the act relates to acreage adjustment, rental and benefit payments, processing taxes, and other matters incidental to what has come to be tersely called production control. But at a late stage in the legislative history of the act two brief sections were added providing for a quite different type of agricultural adjustment. This took the form of marketing agreements and licenses.

In contrast to the relatively minor role which the market adjustment feature was accorded in legislative debate on the bill, it has in the actual operation of the measure been constantly and vigorously called into use. Not only has it been resorted to for the aid of five of the seven "basic" commodities named in the act; besides this, it has been the one approach through which relief could be sought for a host of "general crops" not eligible to the "benefit payment" and production control features of the act. And although these provisions were added somewhat hastily in the later days of the bill's evolution, they tie back into a long history of growth in agricultural marketing institutions and co-operative endeavor. They are of such distinctive character and potential importance that they might almost have constituted a separate piece of legislation.

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[1] For explanation of this plan, see John D. Black, *Agricultural Reform in the United States,* pp. 271 ff. Also the wheat, cotton, and livestock studies in the present series.

The provisions of the original act which dealt with marketing agreements and licenses were very short and general. They simply empowered the Secretary of Agriculture to enter into such agreements with "processors, associations of producers, and others" as would in his judgment "effectuate the declared policy" of the act,[2] and to put these "processors, associations of producers, and others" under licenses having such terms and conditions "as may be necessary to eliminate unfair practices or charges that prevent, or tend to prevent, the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof."[3]

With these broad and general powers rather than any specific mandate, the administrators of the Adjustment Act have during two years' time proceeded with considerable vigor to explore the opportunities thus opened to them. This development of the field, however, has not as yet been either systematic or exhaustive. The administrative organization under which it was carried out was during its first year or two inevitably under the heavy stress of an emergency undertaking and subject to strong pressure from diverse economic interests. With the withdrawal of certain groups that had entered into agreements during the first and second year of the act, and with the coming of various adverse judicial decisions in the lower courts and rather drastic revamping of the act in the summer of 1935, the time seems opportune for re-examination of the whole marketing agreement proposal. The failures met with, the successes achieved, and the problems revealed during three seasons of operative experience should teach lessons of great value in guiding the course of future action.

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[2] The declaration of policy contained in the act is as follows:

"It is hereby declared to be the policy of Congress—

"(1) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will re-establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the pre-war period, August 1909–July 1914. In the case of tobacco, the base period shall be the post-war period, August 1919–July 1929.

"(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

"(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the pre-war period, August 1909–July 1914." 48 Stat. L. 31.

[3] For subsequent amendments, see Appendix C.

In the present volume, therefore, we shall undertake an analysis of the potentialities of these devices as major procedures for the promotion of farm prosperity and agricultural stabilization. Such appraisal will be the task of the last four chapters of the book. Earlier chapters will be devoted to presenting a discussion of the origin and apparent philosophy of the marketing agreement and licensing features of the act and of the steps actually taken under them.

MARKETING AGREEMENT PROPOSALS IN THE McNARY-HAUGEN BILLS

The precise origin of the marketing agreement proposal seems not to be widely known or well understood. The first expression of the general idea is to be found in the Dickinson bill introduced in the House of Representatives on January 4, 1926.[4] The feature was taken over in the third McNary-Haugen bill. This bill was defeated (H. R. 11603, 69th Congress, first session) in the House of Representatives on May 21, 1926, but, modified in some details, was re-introduced at the second session of the 69th Congress (S. 4808). It was passed by both houses but was vetoed by President Coolidge on February 25, 1927.

These bills included the characteristic feature of selling part of the supply abroad, even on a lower price basis, with a view to maintaining relatively high prices on the commodity domestically consumed, with the losses on export sales financed through an equalization fee levied on the first commercial purchaser of the commodity. They went beyond previous bills, however, in designating co-operative associations of producers as the agencies through which export surpluses would be handled and the general price policy carried out. Besides this emphasis on co-operatives, which then occupied the center of the stage of active public interest and governmental concern, these bills provided also that if the board was of the opinion that there was no suitable co-operative available, "other agencies" could be used as parties to agreements made by the proposed federal farm board in order to promote "orderly marketing, to stabilize markets against undue and excessive fluctuations, to preserve advantageous domestic markets, to minimize speculation and waste in marketing." As to the nature of such operations, it was provided:

> Sec. 6(e)[5] Such agreements may provide for (1) removing or

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[4] 69 Cong. 1 sess., H. R. 6563, a bill to establish a federal farm advisory council and a federal farm board, to aid in the disposition of the domestic surplus of agricultural commodities through co-operative associations and for other purposes.

[5] Thus numbered in S. 4808. In H. R. 11603 the same section appeared as 8(e).

> disposing of any surplus of the basic agricultural commodity, (2) withholding such surplus, (3) insuring such commodity against undue and excessive fluctuations in market conditions, and (4) financing the purchase, storage, or sale or other disposition of the commodity. The moneys in the stabilization fund of the basic agricultural commodity shall be available for carrying out such agreements.

After this measure had been vetoed, it was further revised before introduction into the next Congress, and in the new bill the phrase "marketing agreement" was employed for the first time.[6] Section 4 of the bill provided that for each agricultural commodity which the federal farm board, set up to administer the act, "determines may thereafter require stabilization by the board through marketing agreements" the board should create an advisory council "of seven members fairly representative of the producers of such commodity." Section 9 provided that upon request of such advisory council or of leading co-operative association or organizations of producers, or upon "its own motion, the board shall investigate the supply and marketing situation in respect of such agricultural commodity." If it should find a "surplus . . . in excess of the requirements for the orderly marketing of any agricultural commodity or in excess of the domestic requirements for the commodity" and should decide that the co-operatives were not in a position "to control such surplus . . . then the board, after publicly declaring its findings, shall arrange for the marketing of any part of the commodity by means of marketing agreements with co-operative associations engaged in handling the commodity or corporations created and controlled by one or more such co-operative associations."[7]

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[6] 70 Cong. 1 sess., S. 3555.

It would appear, however, that even the bill of 1926-27 was regarded by those working on this legislation as embodying the principle of marketing agreements. The House report on the later measure (S. 3555) in discussing differences between the two bills states that the latter "clarifies and modifies *marketing agreement provisions of the former.*" (Italics ours.) 70 Cong. 1 sess., H. rep. 1273, p. 5.

It can thus be seen that the philosophy of the McNary-Haugen measure in its final form was to rely upon the individual decisions of farm enterprisers as the determinant of supply conditions, subject only to such information, advice, or persuasion as the proposed farm board, other branches of the government, or educational institutions might give. The farm board was to be the special administrative agency for dealing with price-depressing surpluses as they might develop in spite of such guidance. The agreement between distributors or processors and the government in the person of the farm board was the device through which such excessive supplies were to be handled through a comprehensive distributive agency so as to minimize their harmful effects on the agricultural price structure and hence on farm incomes.

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[7] "A marketing agreement shall provide either:

"(1) for the withholding by a co-operative association, or corporation created and controlled by one or more co-operative associations, during such period as shall be provided in the agreement, of any part of the commodity delivered to such co-operative association or associations by its members. . . . or (2) for the purchase by a co-operative association, or corporation created and controlled by one or more co-operative associations, of any part of the commodity not delivered to such co-operative association or associations by its members, and for the withholding and disposal of the commodity so purchased. Any such marketing agreement shall provide for the payment from the stabilization fund for the commodity of the amount of the losses, costs, and charges arising out of the purchase, withholding, and disposal, or out of contracts therefor, and for the payment into the stabilization fund for the commodity of profits . . . arising out of the purchase, withholding, and disposal, or out of contracts therefor."

It was also provided that: "If the board finds that its advice as to a program of planting or breeding of any agricultural commodity as provided in Section 3(i) as hereinbefore stated has been substantially disregarded by the producers of the commodity, or that the planting or breeding of any agricultural commodity for any year is substantially greater than a normal increase, as determined by the board, over the average planting or breeding of such commodity for the preceding five years, the board may refuse to make advances for the purchase of such commodity." (S. 3555.)

It should be recognized that all this was an expression of the economic philosophy of George N. Peek, who since 1922 had been the chief proponent of a plan for bringing about "equality for agriculture." [8] It was evidently his belief that it was unwise or futile to attempt direct control or regulation of production,[9] a general advisory role being all that should be attempted. He did, on the other hand, believe strongly that a substantial enhancement of the farmer's income could be secured by marketing such supplies as did come forward under a co-ordinated administration sponsored and aided by the government.

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[8] Early in 1922 the Peek plan was presented in a pamphlet of 48 pages under the title *Equality for Agriculture.* In this first printing no authors' names were attached, but, when re-issued later that year in slightly revised form, the names of Mr. Peek and General Hugh S. Johnson appeared as co-authors.

Mr. Peek had the general outlines of such a plan developed to a point where he was hopeful of having it considered at the National Agricultural Conference called by President Harding in January 1922. Those responsible for making the program of this conference did not provide an opportunity for him to present it on the floor of the conference. He was assigned to Committee No. 7, Marketing of Farm Products, and there this plan was not accepted. However, when John Simpson of the Farmers' Union offered a resolution endorsing price-fixing for agricultural commodities, Peek proposed a substitute which was adopted. It was worded as follows: "Agriculture is necessary to the life of the nation; and, whereas, the prices of agricultural products are far below the cost of production, so far below that relatively they are the lowest in the history of our country; therefore, it is the sense of this committee that the Congress and the President of the United States should take such steps as will immediately re-establish a fair exchange value for all farm products with that of all other commodities."

Also Committee No. 1, Agriculture and Price Relations, presented a resolution: "That this conference recommends that every instrumentality of the government of the United States be exercised to put the agricultural industry on a par with other industries both as to remuneration, education, and general standard of living." Henry A. Wallace, L. J. Taber, master of the National Grange, David Friday, then president of the Michigan Agricultural College, and Samuel Gompers were members of this committee. *Report of the National Agricultural Conference,* Jan. 23-27, 1922, pp. 138, 171. 67 Cong. 2 sess., Public No. 195.

[9] In December 1924 Mr. Peek, writing as president of the American Council of Agriculture to President Coolidge's Agricultural Conference, said: "It is unfortunate that many spokesmen for agriculture accept the view that the farmers' troubles come from over-production. . . . The existence of an ex-

This government aid was of two kinds. First, Mr. Peek's scheme provided the novel device of an equalization fee as a means of segregating the export surplus from the domestically consumed part of the supply and making it possible to pay a differentially higher price on the latter behind the protective tariff wall which, in the absence of such a special price machinery, would be ineffective as to agricultural commodities which were on an export basis. Second, in order to take full advantage of the favorable conditions thus created, it was conceived as important that that proportion of the commodity which was sold in the domestic market should be equalized as to both time and place of sale through a highly centralized marketing agency, cooperative or governmental in character. This would mean a closely controlled price situation so far as the given supply

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portable surplus of a vitally important food crop or commodity is not an evil, nor should the aim be to render it non-existent by acreage reduction. . . . No human power can adjust acreage in crop or number of livestock so as to be certain of having no surplus for export on the one hand, without inviting national under-production, possibly famine, on the other. . . . No human agency can adjust acreage or number of these great commodities and, except by accident, arrive at, or anywhere near, the desired mark in production. No human agency should attempt to. The one attempting it would be faced with the necessity of suggesting substitute crops to utilize the acres thus vacated. The difficulty of this is apparent. It is noteworthy that those ardent advocates who in 1923 would have turned the wheat farmers into commercial producers of butterfat, are now silent in the face of existing conditions in the dairy industry. Even if it were possible for farmers through voluntary organization to make a nice adjustment of acreage to the estimated domestic demand, there is no possible way of forecasting to what extent drouth and flood, hail and freeze, insects and disease—all these and others beyond the farmers' power to foresee and control—would thwart such calculations."

was concerned, but it did not entail either a philosophy or a machinery of production control.

THE MARKETING AGREEMENT PROCEDURE IN ECLIPSE, 1929-33

After the McNary-Haugen bill had been vetoed a second time (May 1928) and Mr. Hoover had come to the presidency, the run of attention and effort changed somewhat. The Agricultural Marketing Act of 1929 turned its back upon the equalization fee and its implication of export dumping and placed its reliance on ability to sell collectively at satisfactory prices in both domestic and foreign markets, backed by the support of a well-financed Federal Farm Board.

The general theory was not essentially different from either the "commodity marketing" philosophy of the Sapiro co-operatives of the early 1920's or the marketing agreement phase of the later drafts of the McNary-Haugen plan,[10] except that there was no equalization fee to provide funds to absorb any losses incurred through the sale of surplus at lower prices. The measure placed emphasis on ability to maintain a substantially higher level of prices if suppliers of the product were organized into a comprehensive selling agency. The Farm Board was to stimulate organization and consolidation of "national" co-operatives and guide their course rather than follow the marketing agreement procedure of the later McNary-Haugen plan.[11]

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[10] Besides the marketing agreement feature, the Agricultural Marketing Act retained both the farm board and the commodity advisory council devices of the McNary-Haugen bill (see pp. 5, 6) and in numerous sections employed the very phraseology of that measure.

[11] Besides the consolidation of comprehensive federated or centralized organizations, the act also authorized the Board "to assist in forming producer-controlled clearing-house associations adapted to effecting the economic distribution of the agricultural commodity." Since "independent dealers in, and

These comprehensively organized co-operatives were to conduct collective bargaining in the producer's interest and would be so amply fortified with credit at a low interest rate that they, either directly or through separate stabilization corporations, could carry redundant supplies over a period of high production or curtailed demand for considerable periods to await the emergence of a more favorable supply-demand situation. The Federal Farm Board, set up under the Agricultural Marketing Act, never accepted export dumping as a policy, or paid export subsidies. When it approved wheat sales at a loss by the Grain Stabilization Corporation it took pains to argue that these could not properly be regarded as export dumping.[12] All told, such sales probably amounted to less than one-fourth of the stabilization holdings of wheat.

In its phraseology the act gave "orderly production" correlative importance with "orderly marketing." During the scant four years of the Board's existence the preponderant part of its activities was devoted to the field of marketing. Inevitably, the problem of production control forced itself upon the attention of the Board. Chairman Legge and Secretary Hyde in the summer of 1930 undertook a

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handlers, distributors, and processors of, the commodity, as well as co-operative associations handling the commodity" were eligible for membership in the clearing-house association, it will be seen that it bore a strong resemblance to the marketing agreements which have been put in operation by the AAA. Although the clearing-house association device was not extensively employed by the Federal Farm Board, we shall have occasion to refer to its relation to AAA efforts in subsequent chapters (see pp. 133, 187, 318).

[12] The principal instances were sales to foreign governments in July-September 1931—to Germany and China on easy credit terms, and to Brazil in exchange for coffee imports. In addition—to what extent and at what cost the public has not been informed—the Grain Stabilization Corporation earlier sold some wheat for export to move wheat that was "out of position," and some to millers on terms that permitted them to compete in flour markets abroad. Probably in 1931-32 also some wheat was sold at a loss to private buyers abroad.

personal campaign amongst the wheat growers, particularly in the Southwest, to persuade them to reduce their production.[13] Mr. Williams conducted a similar crusade to deter cotton farmers from putting in an unduly large acreage in 1931. When this proved barren of results, he proposed the plowing under of every third row of the growing crop without compensation. Mr. Denman proposed a plan of differential prices for hogs according to weight, designed to penalize over-production. And Mr. Stone, after becoming chairman of the Board, gave evidence of lively interest in the problem of land use and the possibility of this approach to the development of an adequate machinery for the regulation of agricultural production.

The Farm Board's third annual report (December 1932), after discussing the "Progress of Co-operatives in Securing Adaptation of Production to Marketing Needs,"[14] included a section entitled "Production Adjustments Involve Land Utilization," and the following section, on "Surplus Control Methods," closed with the comment:

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[13] The Board's first annual report commented on the importance and difficulty of the problem of production control and concluded:

"Finally, the Board regards measures for prevention of surpluses, through control of excessive production, as absolutely essential to stabilizing farm prices and farm incomes. Co-operative associations and stabilization corporations, supplemented by other devices, may prove able to deal with temporary or occasional surpluses. But none of these, nor all together, nor any government agency can protect farmers from the consequences of repeated or continuous production in excess of market requirements. Adjustments of production to market requirements are indispensable, in agriculture as in industry, to the solution of surplus problems. The problems of control and prevention of agricultural surpluses are vast and complex. The Board has approached the task with courage, but not in a mood of lightly experimenting with large public funds and powerful economic forces. It recognizes that experience as well as investigation is essential in working out effective solutions to these problems. If sound progress is to be made, the experience gained in a single year must be utilized to the full in subsequent actions." *Annual Report of the Federal Farm Board,* June 30, 1930, pp. 25-26; see also p. 4.

[14] "No co-operative system can successfully accomplish its purposes unless production is co-ordinated with marketing. The Agricultural Marketing Act recognizes this in its reference to orderly production and prevention of sur-

> Experience with stabilization thus demonstrates that no measure for improving the price of farm products other than increasing the demand of consumers can be effective over a period of years unless it provides a more definite control of production than has been achieved so far. In a few limited and specialized lines, co-operative associations have made progress toward such control. For the great staple products, however, the problem still remains for future solution.[15]

As the Federal Farm Board experiment followed its unhappy course in the midst of a market whose demand was drastically curtailed by depression at home and abroad, with accompanying restriction of trade, the emphasis of students of the problem of agricultural recovery swung increasingly toward the devising of effective means for securing a remunerative price for that part of the farmer's product which was domestically consumed. Two or three measures of this sort, based on a principle different from that of the McNary-Haugen bills, had been proposed during the years from 1926 forward. And, after passing through various drafts, this plan emerged in the first session of the 72d Congress as a series of "domestic allotment" measures of which the Hope-Norbeck bills (H. R. 12198 and S. 4985, July 7 and 11, 1932 respectively) were the latest and most complete form. The basic principles of this plan were accepted by Governor Roosevelt and were

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pluses. The Board has taken account of it in all its work with co-operatives, although it has not yet been able to give the problem of production adjustments the full attention which it deserves. Moreover, the Agricultural Marketing Act clearly puts marketing, rather than production control, first in order of development." The same, 1932, p. 56.

[15] The same, p. 62.

publicly espoused by him in his Topeka speech and subsequent utterances in his presidential campaign. In revised form this domestic allotment proposal was introduced in the second session of the 72d Congress, where it passed the House on January 12, 1933.

MARKETING AGREEMENT PROVISION ADDED TO THE DOMESTIC ALLOTMENT BILL

In the course of these revisions of the original domestic allotment plan, the procedure of reducing production was added to the first idea of increasing farmers' returns on the domestically consumed portion of their production. The philosophy of reduced production was never very acceptable to Mr. Peek, who still laid his major emphasis on improvement of distributive and processing practices as the means by which adequate farmer remuneration must be secured. He did not believe that the government should direct its efforts toward restriction of output. While it might give direct aid to farmers in an emergency situation, this should not take the form of payment for actions designed to reduce production. His views were set forth at length in a hearing on the Jones bill (H. R. 13991) before the Senate Committee on Finance on February 14, 1933. He characterized the pending farm relief bill simply as:

> . . . emergency agricultural legislation necessary and imperative pending the development of a comprehensive national program for agriculture and the opening of normal export markets through international trade agreements, reciprocal tariffs, application of foreign debt to payment in whole or in part for our exports, stabilization of international currencies, and such other important subjects. . . . This emergency legislation should cover only such commodities (and, if necessary, competitive substitutes therefor) the prices of which in our domestic markets are influenced largely by the prices in foreign markets or which are directly affected by the conditions

> in foreign countries. I should say wheat, cotton, hogs, and possibly tobacco. . . . The period of duration should be one year subject to extension in whole or in part from year to year upon proclamation of the President until a comprehensive national program for agriculture is developed.[16]

Mr. Peek at this juncture revived the marketing agreement procedure and advocated the amendment of the pending bill by the addition of a provision for employing this means to aid in the removal of excessive carry-overs of farm products from the market. He indicated clearly that he attached major importance to this feature and assigned a minor role to the plan of production quotas and payment for acreage reduction. In his own words:

> . . . The purpose of such agreements is to put the agencies of government behind private enterprise (corporate and co-operative) in disposing of surpluses and to aid in maintaining for producers the fair exchange value for their commodity. . . . If the results secured from these marketing agreements are such as to raise prices of agricultural commodities to the fair exchange value, there may be no occasion for the issuance of adjustment certificates and the collection of taxes from the processor. . . . If, with the assistance of government, it is impossible to dispose of production and surplus at home or abroad, through every conceivable marketing channel and in manufacture, then the government may step in during this emergency and offer to arrest the harvesting of a part of any commodity by paying to the farmer the local market price, less the cost of completing the production, harvesting, preparation for and hauling to local market. . . .[17]
>
> The aim to be accomplished by these agreements should be to dispose of existing surpluses and to keep the channels of trade open

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[16] 72 Cong. 2 sess., *Agriculture,* Hearings on S. res. 315 before the Senate Committee on Finance, p. 126.

[17] Mimeographed memorandum on amendments by George N. Peek, Feb. 23, 1933. The view that the use of marketing agreements might obviate "the necessity for employing the processing tax and rental and benefit payments" was also urged by Senator Robinson in supporting the measure on the floor of the Senate. *Cong. Record,* Apr. 7, 1933, Vol. 77, p. 1376.

> through every instrumentality at our command; that is, governmental, producers, processors, and exporters (private or co-operative). Prevention of burdensome supply in future should be provided for by decreasing prospective production before harvest in the areas where it is excessive, compensating the farmer for so decreasing production. . . . Reduction should not take place in sections or areas where the particular products are deficient in supply. To do otherwise would be wasteful and uneconomic and would create dissatisfaction and unrest.[18]

Mr. Peek's proposed amendment, prepared in collaboration with Frederick P. Lee and Charles J. Brand, simply authorized the making of marketing agreements without specifying the terms of the procedure or the character of agreements to be entered into. Under his proposal also they were to be limited to the "basic" commodities, wheat, cotton, tobacco, and hogs (and, if declared "basic" by subsequent proclamation, other grains or meat animals). This proposed amendment to the act, however, was promptly seized upon by producers of non-basic crops as providing a possible means for extending the benefits of government assistance to all classes of agricultural producers. The move to secure such a broadening of the act was led by the American Farm Bureau Federation, largely in response to the aggressive interest taken in the matter by the California Farm Bureau Federation, representing producers of a great variety of minor crops, chiefly horticultural.[19] It appears that the support of these groups was decisive in securing the inclusion of the marketing agreement provisions in the amended Agricultural Adjustment bill which was submitted to the new Congress in March 1933. In the process they saw to it that the limitation to basic commodities was removed and that a measure was secured which held out hope of conferring benefit on any class of agricultural commodities.

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[18] 72 Cong. 2 sess., *Agriculture,* Hearings on S. res. 315 before the Senate Committee on Finance, p. 127.

[19] Various producer groups in California had for some years been experimenting with different devices for the voluntary control of market supplies, in some cases through co-operative associations working alone and in other cases working in conjunction with private handlers, or for compulsory control under state law. See E. A. Stokdyk, "Economic and Legal Aspects of Compulsory Proration in Agricultural Marketing," *California Agricultural Experiment Station Bulletin No. 565.* Some reference to this California experience will be found on pp. 127, 133.

THE LICENSING PROVISION

Furthermore, the new bill added a provision for licensing processors and distributors. While this section was frequently discussed by its proponents as a means of making marketing agreements effective, or processing tax provisions equitable, its purpose is stated to be to eliminate unfair trade practices or charges.[20] It stood as an independent sub-section in the act, apparently co-ordinate with the other two major features—production control and marketing agreements. Any one of the three devices could be employed, within its designated field,[21] singly or in combination with one or both of the others. The AAA's position with reference to the use of licenses was first stated as follows:

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[20] For results of this phrasing and the ultimate resolving of the ambiguity, see pp. 284 ff.

[21] As to their designated field of use, adjustment contracts are limited to the enumerated basic commodities (seven in number in the original act, to which six commodities were added in the amendment of Apr. 7, 1934, two in the amendment of May, 9, 1934 and one in the amendments of August 24, 1935). The marketing agreement provision was made applicable to "any agricultural commodity or product thereof," whereas the licensing provision covered "any commodity or product thereof or any competing commodity or product thereof." It was, however, limited to such commodities "in the current of interstate or foreign commerce." The marketing agreement section as originally drawn employed this same phraseology, but, by the amendment of Apr. 7, 1934, it was made to read "in the current of, or in competition with, or so as to burden, obstruct, or in any way affect interstate or foreign commerce." The significance of this difference and its subsequent removal by amendment is discussed in Chapter XII. As originally enacted, the marketing agreement section was limited to "processors, associations of producers, and others engaged in the handling . . . of any agricultural commodity or product

> To enforce the terms of the agreements the Secretary is empowered to grant licenses to processors and distributors and others in the industry or area in which a marketing agreement is in force and to fix the terms of the licenses.[22]

Subsequently, this statement was changed to read:

> In his discretion, the Secretary may license the participants of an industry handling, in interstate or foreign commerce, an agricultural commodity or its products, without any marketing agreement having been established.[23]

Although the licensing power had been proposed as an adjunct to the processing tax and benefit payment feature of the law, it has not thus far been resorted to for this purpose.

The licensing feature had not been a part of Mr. Peek's original amendment, but he readily agreed to the practical necessity for its inclusion, and in the hearings on the bill (H. R. 3835), which was introduced after the change of administration, he explained the purpose of the licensing provision as follows:

> I referred to the practices which are occurring by reason of large buyers using their power to buy, to break down the whole structure of prices with the people who have to sell. . . . So I say within the limitations of fair prices to the consumer, if we can straighten the back of the industry so that they can correct these bad practices themselves through the control of the licensing system, we will have gone a long way to remedy that thing.[24]

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thereof." By the amendment of Apr. 7, 1934, producers were also included as parties to such contracts. See Chap. XI.

[22] *The Agricultural Adjustment Act and Its Operation,* AAA, October 1933, p. 12.

[23] The same, rev. ed., August 1934, p. 12.

[24] 73 Cong. 1 sess., *Agricultural Emergency Act to Increase Farm Purchas-*

Secretary Wallace, in his presentation of the bill at the Senate hearings, advocated the licensing provision on the ground that it "really furnishes the power to prevent unfair trade practices from crippling the act." Assuming a case in which a marketing agreement had been entered into to protect the common interests of all the parties involved, namely, producers, processors, and consumers, he said: "Suppose some association or some processor deliberately tries to sabotize [sabotage] the agreement entered into, we have here the power to make him behave." To this, Mr. Frederick P. Lee, who was then acting as special counsel for the Department of Agriculture, added:

> The terms of the license would be left to the discretion of the Secretary of Agriculture and would in general be such as would prevent unfair practices or charges which tended to defeat the purpose of the act. It is remedial power too or ancillary power to carry out the other authority of the Secretary in trying to arrive at a better price for agricultural commodities. The license might be suspended for violation of the terms under which it is granted.[25]

In a subsequent statement the Secretary expressed himself as regarding the licensing provisions as "vital" and explained their purpose and operation as follows:

> They are not an end in themselves; but are supplementary authority to effectuate production and marketing programs that might otherwise be defeated through practices unfair to the public or producers, or even to the larger number of processors and distributors who would be making an earnest attempt to effectuate the policy of the bill. To illustrate, I would feel that the policy of the

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ing Power, Hearings on H. R. 3835 before the Senate Committee on Agriculture and Forestry, Mar. 17, 1933, p. 91. This regulatory phase of the matter he regarded as entirely distinct from the use of marketing agreements as a device for facilitating exports or the domestic disposal of surpluses. "That," he said later in his testimony, "is another angle of the situation. That is a second point. There are two unrelated points."

[25] The same, p. 11.

> bill were being defeated should, as a result of a 3-cent processing tax on cotton, an excessive increase in price be passed on to the consumer. The processing tax, if used, should not be availed of to pyramid costs to the consumer. The cotton farmer obtains approximately 5 cents for the cotton in a shirt which costs the consumer \$1.00 or \$1.50. A 3-cent tax, even with due allowance for wastage and other factors, should not increase that cost more than approximately another 5 cents. Should, as a result of the operation of the bill, there develop practices or charges unfair to the producer or consumer, I would feel that the licensing provision might be called into play. Without attempting to speculate as to the existence in fact of the many unfair practices frequently alleged to exist in our distributive system, it seems necessary that there should be authority to restrict such practices when they are shown in fact to exist and when they tend to defeat the other operations under the bill.[26]

Certain co-operatives also, particularly those engaged in the handling of fluid milk, felt that the licensing provision of the bill might be made useful in remedying the two great weaknesses in prevailing co-operative efforts; namely, the failure of producers to give full support to their co-operative organizations, and destructive price cutting on the part of distributors. Charles W. Holman, secretary of the National Co-operative Milk Producers' Federation, argued that these difficulties could be alleviated if not cured by a universal system of licenses. He said:

> The particular provisions that we desire to commend to you cover the power giving the Secretary the right to license the trade including the co-operatives, and to control in interstate and foreign commerce operations so far as the licenses are concerned. . . . There are a great many evils existing today in the dairy industry, both with regard to price discrimination in country districts, where at non-competitive points butterfat is often bought at anywhere from 4 to 5 cents a pound under the price paid by the same creameries at competitive points. Through a licensing system we think that

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[26] The same, p. 130.

> that could be corrected in great measure and considerable benefit would come to our farmers as a result. Also, I think, I can state conservatively that while dairy products and the price of milk in the cities has fallen tremendously, that fall was not so much due to the lack of consumer buying power in the cities for our milk as it was due to the lack of co-ordination among the farmers themselves and to the lack of co-operation among the distributors themselves, the result being a series of disastrous price-cutting tactics which forced the price of milk down in many cities of this country to far below what there was any consumer demand for it to go down to. We believe that through licensing and through conferences with the industry, the Secretary of Agriculture can do a great deal toward stabilizing conditions in the urban communities where we are marketing our milk.[27]

A somewhat different point of view was stressed by certain speakers during the course of congressional debates. Here the possibility of using the licensing power as an aggressive agency for reforming marketing practices was stressed. Two such excerpts from the House debates run as follows:

> This [Sections 8(3) and (4) relating to licensing] is the most important feature in the bill and is the thing that is worrying the opponents. I say frankly that unless this is carried in the bill, and unless the Secretary secures the services of men to administer this act who cannot be controlled by the millers and manufacturers, the bill will not be worth the paper that it is written on. The handlers of farm products and the processors of farm products object to this on the ground that the Secretary, who, by the way, is under the President, would be able to regulate business. I am sure that the Secretary and the President are not concerned about doing any harm to the business of these handlers of and processors of farm products. If they will conduct their business on a fair basis, the Secretary will not have to use the licensing feature of this bill. I warn you now if this section goes out these people being able to combine, monopolize, and under trade practice rules, fix and control prices

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[27] The same, p. 326.

> whereby they would be able to take the benefits away from farmers, that it would be better to kill the bill.[28]
>
> Paragraph 3 of Section 8 is the licensing provision. It is the essence of the contract, it is "the heart of the covenant." Under its wise use I expect to see the unreasonable profits of many a middleman decreased. Why is bread cheaper in France than in the United States when the French farmer is receiving three times as much for his wheat as the American farmer? Possibly because many a processor is trying to pay interest and dividends upon an old and obsolete plant that should have been junked long ago. The right to issue and to revoke a license is a broad and sweeping power. Under it the Secretary of Agriculture will have his hand upon the products of the fields until they reach the ultimate consumer. It is said that the American farmer receives but one-third of the price paid by the consumer of his products, the processor, the trade, and transportation agencies taking two-thirds. Under the licensing provision the farmer's share will be materially increased because the Secretary will have the right to adjust costs and he will correct many a wrong.[29]

In the course of Senate hearings, Senator Wheeler took much the same position, charging that the millers and other processors were fighting the licensing section because it gave the Secretary of Agriculture power to stop unfair practices in the processing and distribution of agricultural products. "I for one," he said, "shall insist upon the licensing feature in this bill if it is the only feature in the bill that passes."[30]

With these rather different views of the meaning of its marketing agreement and license provisions, the Agricultural Adjustment Act was passed by Congress and approved by the President on May 12, 1933. In the original version of the act, these provisions appeared in the following form:

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[28] Representative H. P. Fulmer (S. C.), *Cong. Record,* daily ed., Apr. 5, 1933, p. 1294.

[29] Representative W. M. Pierce (Ore.), the same, Mar. 22, 1933, p. 696.

[30] 73 Cong. 1 sess., Hearings on H. R. 3835 before the Senate Committee on Agriculture and Forestry, Mar. 17-18, 1933.

Sec. 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power:

. . . .

(2) To enter into marketing agreements with processors, associations of producers, and others engaged in the handling, in the current of interstate or foreign commerce of any agricultural commodity or product thereof, after due notice and opportunity for hearing to interested parties. The making of any such agreement shall not be held to be in violation of any of the anti-trust laws of the United States, and any such agreement shall be deemed to be lawful: *Provided,* That no such agreement shall remain in force after the termination of this act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under Section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements.

(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing acts of Congress or regulations pursuant thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof. The Secretary of Agriculture may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the Secretary suspending or revoking any such license shall be final if in accordance with law. Any such person engaged in such handling without a license as required by the Secretary under this section shall be subject to a fine of not more than $1,000 for each day during which the violation continues.

(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade

practices and charges, and to keep such systems of accounts, as may be necessary for the purpose of Part 2 of this title.

. . . .

Sec. 10(h). For the efficient administration of the provisions of Part 2 of this title, the provisions, including penalties, of Sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title and to any person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under Part 2 of this title to the Attorney-General of the United States, who shall cause appropriate proceedings to enforce such agreement to be commenced and prosecuted in the proper courts of the United States without delay.[31]

Like all other sections of the act, the marketing agreement and licensing provisions were put into effect as emergency measures and were to terminate "whenever the President finds and proclaims that the national economic emergency in relation to agriculture has ended." Since the body of experience with market adjustment has come about under these provisions and the comparatively slight amendments made in 1934, we shall defer discussion of the more drastic modifications of 1935 to later sections of the book.[32]

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[31] 48 Stat. L. 31. The manner in which the first sentence of Sub-section 2 was modified by the amendments of April 7 is indicated below. The deleted words appear in brackets and the added words in italics:

"*After due notice and opportunity for hearing,* to [To] enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling [in the current of interstate or foreign commerce] of any agricultural commodity or product thereof, [after due notice and opportunity for hearing to interested parties] *in the current of or in competition with, or so as to burden, obstruct, or in any way affect, interstate or foreign commerce.*

[32] See p. 16 and note 31 above on 1934 amendments. See Appendix C for full text of amendments approved Aug. 24, 1935, and Chaps. XI and XII and the index for discussions thereof.

CHAPTER II

AGREEMENT PROCEDURES AND POLICY

Throughout the period in which the Agricultural Adjustment Act was being drafted and considered in Congress and during the subsequent period when the Adjustment Administration was being set up, emphasis was laid on the fact that the measure provided broad and flexible powers instead of laying down a specific and detailed course of action. This was due, in part at least, to the fact that the Adjustment Act was something of a compromise between two schools of thought. Marketing agreement and licensing provisions had ultimately been included in an act which started out as a production control measure, but it still remained to be seen what relative emphasis the two methods of attack would be given in the process of actual administration. The act was so drawn as to allow the test of time to decide which type of approach should be used in a given situation or whether some combination of the two should be employed.[1]

ADMINISTRATIVE ORGANIZATION AND PROCEDURE

When it came to the administration of the act, it became apparent that the scheme of organization to be used would depend upon which powers were to be invoked, with what degree of vigor they were to be put in operation, and the general methods and personnel to be used. Even before the measure became law, several paper plans of organization had been developed. One quite obvious arrangement was to set up functional divisions designed to give specialized attention respectively to operative problems, legal problems, financial relations, public information, and the like. Equally obvious was the desirability of dividing the work into commodity sections. But even within the commodity sections it was insisted by some persons strongly influential in shaping the organization that there should be a dual scheme—one division having to do with production problems and activities and such production control efforts as might be launched, and the other concerned with relations with processors and distributors of the given commodity.

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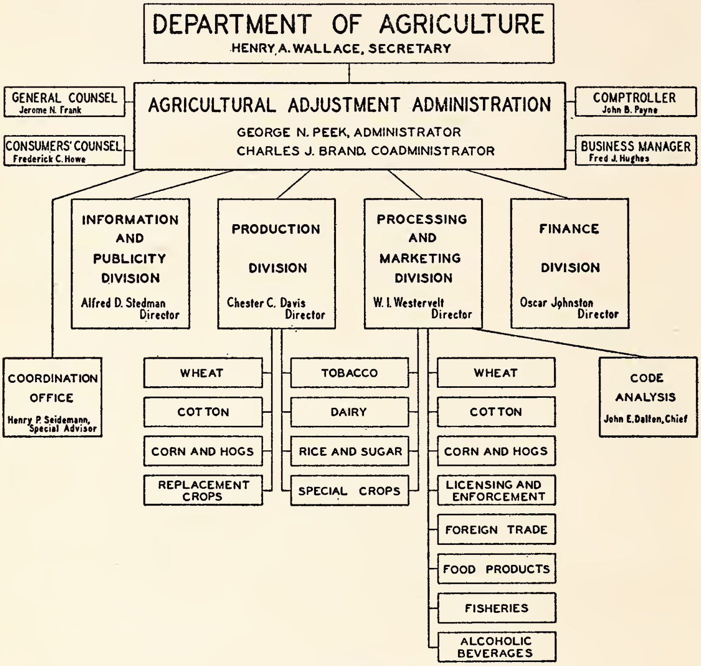
[1] Subject of course to the limitation that the production control features of the bill were applicable only to an enumerated list of "basic commodities."

In the conference of farm leaders held in Washington on Mar. 10, 1933 to make recommendations for the drafting of a farm relief bill, "the question as to what plan could best be applied to cotton, what to wheat, to dairy products, and so on, aroused the most discussion. Once or twice it looked as if this might be the rock the conference would split on. . . . The upshot . . . was the proposal to make the legislation so flexible that the Secretary could apply whatever scheme seemed best adapted to a given commodity." Henry A. Wallace, *New Frontiers,* 1934, p. 163.

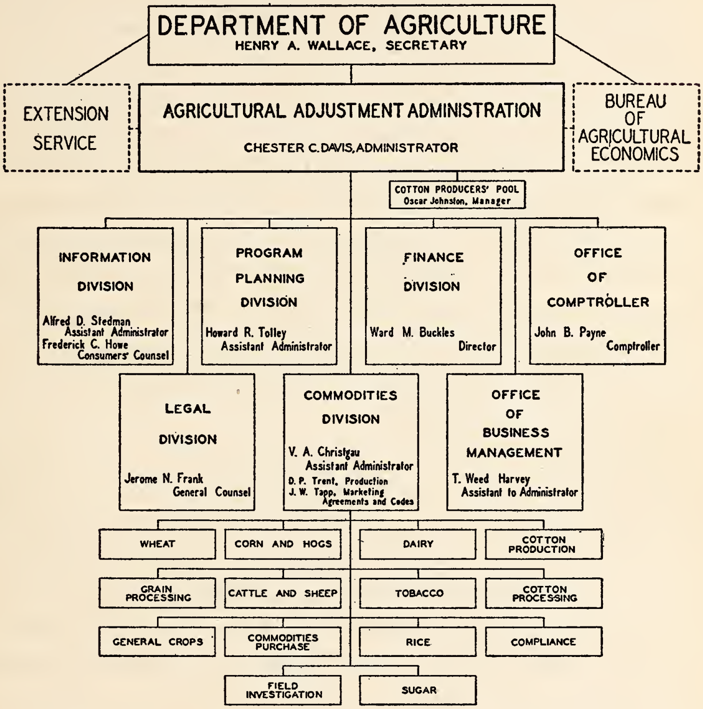
The plan of organization which emerged from this initial attack on the administrative problem is shown graphically in the chart on page 26. Besides an Information and Publicity Division and a Finance Division, there were two major operative divisions—one for production activities and the other for matters relating to processing and marketing. Of the four commodity sections under the Production Division, three of them—wheat, corn and hogs, and cotton—had a corresponding section in the Processing and Marketing Division. In the latter division there was also a section covering licensing and enforcement, another for foreign trade, and two others for food products and fisheries respectively (dealing entirely with code matters). Besides these sections, which classified exclusively with one or the other division, there were four sections which merged the two lines of function and were responsible to the directors of both the Production Division and the Processing and Marketing Division. These dually organized sections were those for tobacco, dairy, rice, and special crops. In the course of time this form of organization came to be accepted as the most practical way of handling the work of the various commodity sections, and in the reorganization effected in January 1934 the Production Division and the Processing and Marketing Division were merged into a single Commodities Division. Separate processing sections were retained for only two

ORGANIZATION OF THE AGRICULTURAL ADJUSTMENT ADMINISTRATION, 1933



commodities—grain and cotton.[2] An outline sketch of the revised organization (with minor changes later introduced) appears below.[3]

ORGANIZATION OF THE AGRICULTURAL ADJUSTMENT ADMINISTRATION, 1934



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[2] Likewise the original Replacement Crops and Foreign Trade Sections were then transferred to the new Division of Program Planning; Licensing and Enforcement was transferred in part to the Legal Division and in part to a new Division of Field Investigations; and Fisheries (involving code questions only) to NRA. The work of the Code Analysis Section, which in the first plan of organization was attached directly to the Administrator's office, was put under direct charge of the assistant director of the Commodities Section. The Division of Food Products disappeared with the return of the major part of the code work to NRA.

[3] For a second reorganization effected in February 1935, see p. 232.

On the day after the act was approved, George N. Peek was designated administrator, and Charles J. Brand, co-administrator. The former had been a business executive for many years and a member of the War Industries Board from 1917 to 1919. The latter had been chief of the Bureau of Markets of the United States Department of Agriculture for six years after its founding, thereafter successively vice-president of a large fruit and vegetable distributing concern, consulting specialist in marketing to Secretary of Agriculture Henry C. Wallace, and executive secretary of the National Fertilizer Association. The entrusting of the administrative task to these two men of wide experience in industries closely connected with agriculture seemed to assure early and vigorous attempts to put the marketing agreement feature of the act to the test of practical use.[4] Furthermore, both of them had manifested particular interest in the marketing agreement approach to the problem of agricultural adjustment.

Specific proposals for applying the marketing agreement provisions of the act were promptly forthcoming not only from those who originally sponsored the idea but also from others who, though originally indifferent or hostile, now became interested in its possibilities as a mode of attack upon particular problems. These included many processors and distributors of farm products, who evidenced a desire to avail themselves of this feature of the act as soon as the starting gun should be fired. The season was already well advanced, summer was coming on, and many crops were nearing harvest. A large crop of cotton was in prospect in the South. The cutting of wheat was soon to begin in the Southwest. The production of milk, stimulated by good seasonal pastures, was at a high rate. Tobacco and rice crops were moving toward maturity. For the lesser crops the desire for action of some sort was no less acute. California canning peaches were almost ready to be picked. Deciduous fruits, pears, peaches, berries, and other products which are shipped fresh, were soon to flow to market in volume. Day by day, everywhere, growing crops on farms were moving forward toward maturity and the market. "Wherever we turn to deal with an agricultural commodity," remarked George Peek, "we have in prospect a race with the sun."

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[4] On June 22 H. R. Tolley, director of the Giannini Foundation of Agricultural Economics of the University of California, was made head of the Special Crops Section (since changed to General Crops), which was concerned chiefly with marketing agreements. He was thoroughly familiar with the problems of California fruit and vegetable producers and with the developments in that state leading up to the passage of a proration law analogous in its operation to the marketing agreement feature of the Agricultural Adjustment Act.

The most ambitious proposals brought forward were those which contemplated the use of marketing agreements as the major program for the great "basic" crops. Suggestions of this character for the several fluid milk markets were brought forward by the milk producers' co-operatives, and for wheat, tobacco, and livestock by men within the Administration, though the latter did not get far.[5]

In the case of rice, marketing agreements were put forward as the primary device, to be applied in such a way that production control could be achieved without resort to processing taxes or benefit payments. Even where a production control program got under way vigorously and soon, marketing agreements were sometimes looked upon as supplementary in the accomplishment of specific purposes. For example, a marketing agreement for the export of surplus wheat from the Pacific Northwest was devel-

[5] The hope of dealing with wheat through a marketing agreement persisted from the beginning of AAA activities at least until late October. See J. S. Davis, *Wheat and the AAA*, pp. 231-33.

oped alongside the major program for production control of wheat. Agreements were negotiated also for the principal kinds of tobacco. One of them constituted the whole program for the type to which it was applied and established a mechanism for controlling the amount to be put on the market. The others were simply price and quantity fixing agreements covering the 1933 crop, pending the development of production control plans. Finally, there was a host of proposals for dealing with a long list of non-basic commodities—agreements for the allocation of the market, the withholding of excessive supplies, the naming of producers' prices, the fixing of resale prices in the trade, or of maximum marketing charges.

Of still different character were proposals for marketing agreements applying to either basic or general crops and designed to establish fair trade practices. Several of these were advanced by the respective agricultural trades, notably the sugar refiners, the meat packers, and ice-cream manufacturers. These proposals were in general based upon the idea of industry self-government, which was in the summer of 1933 receiving so much attention in connection with the development of NRA codes. A word should be said therefore concerning the relations between the AAA and the NRA.

In our discussion of the origins of the marketing agreement provisions of the Agricultural Adjustment Act, we noted (pages 17-21) the fact that some of its proponents looked upon this device as a potential means of regulating processing and distributing charges and the trade practices of those who handle agricultural commodities after they leave the farmers' hands. Administrator Brand was particularly interested in the problem of regulating trade practices and believed strongly that such regulation could be accomplished very largely by the respective trades themselves, through the adoption and self-administration of codes of fair competition. However, when the National Industrial Recovery Act was passed (June 16, 1933), it provided a very similar type of procedure for all lines of business. The agricultural trades were eligible for NRA codes as well as AAA marketing agreements. This situation seemed to promise not only confusion and duplication of effort but also the possibility that the regulation of trade practices might be undertaken by an agency which was unfamiliar with, and possibly unsympathetic to, the problems and hopes of the agricultural industry which it was intended to safeguard under the Adjustment Act. In this situation, Administrators Peek and Brand requested the President to place jurisdiction over codes for the agricultural trades in the hands of the Secretary of Agriculture, to be administered through the AAA. With the acquiescence of General Johnson and his general counsel, Donald Richberg, this transfer was effected on June 26.[6] There was thus placed upon the Agricultural Adjustment Administration the responsibility for receiving proposals for codes as well as marketing agreements, and such proposals began to come forward promptly and in great numbers. Between June 26 and December 6, 1933, over 450 were dealt with in the AAA.[7]

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[6] Executive Order No. 6182. Jurisdiction over questions of hours and wages was excepted in this transfer and retained by the NRA.

Codes transferred to the AAA by Executive Order No. 6182 were limited to milk and its products, tobacco and its products, and all food and foodstuffs. By a subsequent order (No. 6207), dated Oct. 20, 1933, the list was considerably extended.

[7] Mr. Brand resigned as coadministrator effective Sept. 30, and Administrator Peek resigned on Dec. 8. One month after Mr. Peek's resignation, President Roosevelt ordered those codes which had been under the jurisdiction of the AAA, but which covered lines of business beyond the first processing of

In dealing with this flood of proposals for marketing agreements and codes, the AAA sought to avoid the double danger of seeming on the one hand to lack aggressive interest, and on the other to adopt an attitude of arbitrary approval or disapproval. Its avowed intention was to perfect a process of discussion whereby a proposal for a marketing agreement, whether initiated within the government or outside, would move forward through evolutionary stages of proposal and counter-proposal, argument, and debate. Secretary Wallace emphasized this in a press conference on May 13, when he stated that neither a czar nor a group of czars would administer the act, but that rather the Secretary and administrators would act as "catalyzers" to bring about a definite formation of group opinion and then put the resultant policy into effect. The only insistence would be that farmers and others get together to understand the facts.[8]

The law prescribed giving public notice and providing opportunity for formal hearing on all proposals before an agreement was adopted. While details of procedure differed, the usual process was to begin with informal conversations between the commodity marketing groups involved and the corresponding commodity sections of the Agricultural Adjustment Administration. When support for a proposal began to emerge clearly, it entered the more formal stages of procedure.[9] The processors and handlers

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agricultural commodities, to be transferred back to the NRA. This Executive Order (No. 6551) considerably lightened the burden on the AAA.

[8] M. S. Eisenhower, "Summary of Discussion at Press Conference Held in the Office of Secretary of Agriculture Henry A. Wallace on May 13, 1933," *Extension Service Stencil No. 6951,* U. S. Department of Agriculture.

[9] Many proposals, however, did not survive the earliest stages of casual discussion. In some cases a proposal was more or less automatically eliminated because of the different program of action which was adopted by the Adjustment Administration. The outstanding example of this occurred in connec-

sponsoring the proposal were asked to submit copies to the Adjustment Administration. The appropriate commodity section then analyzed the proposal with particular reference to its possibilities for improving the income of producers. The Consumers' Counsel examined it to see if an undue burden was to be placed upon consumers. The Legal Division, that is, the General Counsel and his staff, passed upon the legal aspects of the form in which it was drawn.[10] The next step was for the Chief of the Commodity Section to assume responsibility for revisions suggested as a result of his own analysis, that of the Consumers' Counsel, and that of the General Counsel. These he transmitted to the handlers and processors, making arrangements at the same time for an informal conference between them and representatives of the AAA.

After some understanding had been arrived at, the next formal step was for the handlers and processors sponsoring the proposal to file an application for a formal hearing upon the revised draft. Within the Adjustment Administration the advisability of proceeding to public hearing was passed upon by the Commodity Section, and also by the Production Division office, the Processing and Marketing Division office, the Consumers' Counsel, the Legal Division, the Administrator, and, finally, by the Secre-

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tion with programs for the major commodities—cotton, wheat, and corn. When acreage control for these crops was decided upon, any thought of employing marketing agreements as the sole or principal means of dealing with them was pushed into the background. With some proposals the very first stages of discussion revealed such a lack of data relative to the commodity that further progress was impossible. In other cases such conflicts of interest and opinion were aroused that deadlock resulted and further effort was abandoned.

[10] As a guide to those concerned with the drafting of marketing agreements or codes, the AAA issued on Oct. 24, 1933 a 15-page pamphlet entitled, *Statement of General Policies and Model Drafts of Marketing Agreements and Codes of Fair Competition.*

tary's office. Favorable action by these cleared the way for the revised proposal to move on to public hearing. The distribution of public notices, copies of proposed agreements, and press releases was relied upon to give full information regarding the hearings and proposals under consideration. At the hearings, all interested parties, including growers, handlers, and processors, and representatives from the Adjustment Administration itself, were given opportunity to present argument either for or against the proposals and to suggest changes. There was frequent emphasis on the point early made by Secretary Wallace, that the object of a hearing is to develop the facts concerning the commodity and the proposal.[11]

After public hearing final revision was very commonly delayed as a result of disagreements that arose. Rarely were the sponsors of a proposal able to get it through the hearing without opposition. Usually individuals and groups appeared to argue that as a whole or through some of its provisions it would injure them. While clash of interest was not especially violent at this stage, the whole development of the marketing agreement idea was accompanied by more or less conflict. The public hearing attracted attention to these conflicts and revealed how complex and tedious was the process of evolving an "agreement" out of a proposal.

To think of this conflict as being merely between two groups, one advocating the proposal for a marketing agreement and the other opposing it, is to over-simplify the picture. Actually, in most cases both support and opposition arose from complex groupings of interests. In these it is possible to find many odd combinations—and divisions—of growers and processors. There were brought to light not only antagonisms of interests between growers and the agricultural trades, but many inter-grower and inter-agricultural trade group conflicts as well.

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[11] Hearings are open to the public and an official record of all argument and discussion is made, transcripts of which are open for public inspection at the Chief Hearing Clerk's office, AAA, Washington, D. C.

Take, for illustration, the alignment of grower against grower. Those producing the same agricultural commodity were often lined up in hostile camps as, for instance, the producers of apples in rival areas. Growers producing the same product for the same market were commonly unable to unite in support of a given marketing agreement, but instead separated into at least two groups, one supporting it and the other—loosely referred to as "independents"—opposing it. Among the agricultural trades also, particularly among those handling competing products, there were often violent and bitter battles. The fight among butter manufacturers, oleomargarine manufacturers, cottonseed oil producers, and importers of fats and oils, is an illustration. Struggles between large firms and small firms or between the trade association members and the "independents" were only to be expected in the discussion of any marketing agreement proposal.

Long-standing business wars were brought to the front. Within the tobacco manufacturing trade a dramatic struggle was staged between the manufacturers of four well-known cigarettes and the manufacturers of competing "10-cent" brands. Contests within the distribution field were many. The chronic antagonism between chain stores and independents was carried into hearings and conferences with vigor. Older distributing agencies tried to close in upon the newer upstarts, the peddlers, and independent truckers. These "new businesses" resented proposals to curtail their business or growth and fought back. Hot battles developed between old-line established brokers and wholesalers and the great chains.

These struggles within the groups of growers, and within the groups of market interest, often became complicated by combinations of growers with shippers or processors to oppose some other group or groups. In the hearing upon proposed agreements for the citrus fruit industry the combined grower and handler interests of Florida were often found opposing the combined grower and handler interests of California. Perhaps as complicated and as bewildering a variety of cross-currents of interest as could be uncovered anywhere arose out of the proposals to set up marketing agreements for sugar. The conflicts were old, but they rose to a higher pitch as domestic growers and processors of cane and beets were pitted against planters and manufacturers of the Islands. Beet growers contested cane growers over allotments, and independent refiners fought the refiners of the trade association. Not infrequently the conflict of group interests took on a sectional alignment, with resultant repercussions of a political character.

The AAA thus found its task both large and difficult. It had been relatively easy to welcome with open arms proposals for marketing agreements. To encourage discussion, debate, and argument "to bring out the facts" was not especially difficult. But to reconcile the "facts" presented by groups with conflicting interests was a far harder matter. After public hearings much reconciling of conflicting interests had to be effected and compromises arrived at, with the result that the agreements finally adopted bore no very close resemblance to the proposals originally offered.[12] The whole process of evolving marketing agreements was rendered still more difficult by the fact that the

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[12] To some extent labor could be economized by using the first agreement in a given field as a pattern for subsequent undertakings in the same commodity field.

Adjustment Administration itself had no unanimity of view as to the precise goals to be sought or the course which would be followed in reaching them. Some account of these divergencies of viewpoint and of the changes of emphasis that took place with the passage of time is therefore necessary.

PRINCIPAL VIEWS AS TO THE USE OF MARKETING AGREEMENTS

In tracing the origin of the marketing agreement phase of the Agricultural Adjustment Act in the preceding chapter, we presented in some detail the statements of George N. Peek. Since he became the first administrator of the act, we shall recapitulate here the views which he at that time entertained with reference to its operation. His various utterances indicate that he believed the wise course would consist of three steps, as follows:

1. To approach processors and distributors, seeking to get them, through unofficial voluntary agreements among themselves or under AAA marketing agreements, to undertake to pay a remunerative price to producers. In many cases this could be done and the whole supply disposed of through the regular channels of distribution and use.

2. To employ agreements like the above to handle all such supplies as could be disposed of at remunerative prices through the regular channels, but to supplement such distribution by finding special ways of disposing, in either export or domestic markets, of any surplus not marketable at this price level.

3. If all such efforts should fail thus to clear the market of supplies which depressed prices below the parity level, then to invoke the production adjustment feature of the act to check current or future output.

In a press release given out by Mr. Peek on assuming the office of administrator, the idea that governmental action would be resorted to only when other efforts failed was further elaborated as follows:

> To the food and textile industries, I want to make it clear that the spirit and purpose will be to act with as little interference with established institutions and methods—indeed with as little administration of any kind as is consistent with the fixed purpose of the law; namely, *to raise farm prices.* It is my opinion that much of that purpose can be accomplished by these industries without anything more than the aid that the government and agriculture can and will give them.
>
> The first step will be to discuss with industries and trades our purposes, to ask them what they need from farmers and from government, and to call upon them, with the help of those concerned, to work out the difficult task themselves in such manner as will least interfere with their business and established methods, with as little government interference in their affairs as is reasonably possible. But none will be permitted to forget the purpose of the legislation—*to raise farm prices* in the national interest.[13]

To carry out this policy of securing desired results as largely as possible through voluntary action within the respective trades, Coadministrator Brand promptly brought about the setting up of a Food Industries Advisory Board within a commercial group which in 1929 handled 12 billion dollars of product. Through this Board's good offices, he hoped to be able to secure adhesion of these industries to a program of voluntarily higher prices for agricultural products.[14] In a letter on August 26 Administrators Peek and Brand suggested:

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[13] *AAA Press Release No. 1159-33,* May 15, 1933, p. 2.

[14] Mr. Brand's views were stated before the Inter-Mountain Economic Conference on Sept. 22, as follows: "The trade agreement and licensing provisions of the Farm Act give us an opportunity to do something about preventing waste in distribution. Distribution costs went up during the war, and have not come down since then. The spread between what the farmer gets and what the consumer has to pay has not narrowed nearly so much as both

That members of the industry purchasing agricultural commodities from farmers will, in making such purchases, re-establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the pre-war period August 1909-July 1914.

That members of the industry will accomplish this in one of two ways: First, by making such purchases at parity prices whenever practicable at present without entering into a marketing agree-

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the farmer and the consumer have a right to expect. So-called service charges that are figured into our food bill cost too much. The difference in the reward for growing food and for processing and distributing it is tremendous. On the average retail food prices in 1932 were 10 per cent higher than they were in 1910; farm prices were 40 per cent lower. . . . Spreads are too large between country and city prices in the case of many commodities." Marketing agreements for fruit, he explained, were "intended to set up machinery for the operation of proration plans under official supervision, with equitable treatment of the shippers and growers in the several shipping districts, so that all may contribute to the success of the plan by withholding a portion of their shipments when necessary." ("Industrial and Agricultural Adjustments," *AAA Press Release No. 660-34,* pp. 15-16, 17, 18.)

General Westervelt had on July 27 expressed his position on marketing agreements as follows: "The AAA . . . seeks to raise the incomes of the farmers by two principal means: (1) By getting their co-operation in necessary adjustments calculated to bring supply into a better balance with demand; and (2) by fostering trade agreements among producers, processors, and distributors of agricultural products, so that competitive wastes may be eliminated, trade practices improved, surpluses moved into markets for consumption, and producers' prices raised. I imagine the co-operative associations will specially welcome the regulation of trade practices, and the raising of trade ethics, under marketing agreements. They have much experience of unfair competition. . . . But let me in closing remind you that the Agricultural Adjustment Act deals primarily with production, and only secondarily with marketing. It rests on the principle that price control comes ultimately through production control, and in no other way. Controlling the channels through which goods flow to market, without simultaneously controlling the sources of the supply, accomplishes little. All groups that co-operate with the Administration in marketing agreements must join in the effort to regulate production, even if their interest lies principally in the marketing process. That is the only condition under which the Administration will accept their help." ("How the Marketing Act Will Function in the Marketing of Farm Commodities," *Proceedings of the American Institute of Co-operation,* 1933, pp. 31, 34; also reprinted as *AAA Press Release No. 143-34,* pp. 4, 8.)

> ment; or else, second, by carrying out marketing agreements under the Agricultural Adjustment Act that will provide such prices to farmers, proposed marketing agreements to this end to be submitted to the Secretary of Agriculture not later than November 1, next.
>
> . . . .
>
> Where a marketing agreement is found necessary in order to carry out the contemplated purposes, the agreement should deal with relations between producers and processors of agricultural commodities and the distributive machinery for the products. Provisions for quotas and restricted shipments may be included where necessary, but should not be included if they will tend to restrict or limit competition without providing satisfactory price assurance to producers.[15]

To this letter the Food Industries Advisory Board replied sympathetically, pledging itself "to use all reasonable efforts to secure from industry an active co-operation in obtaining [parity prices] for the farmer," and adding:

> Whenever it is deemed advisable by the industry, commissions and handling, storage, financing and similar charges for services within the control of the industry will be regulated to the end that proper protection will be given to the producer and the consumer.
>
> That a schedule of fair trade practices for the members of the industry shall be adopted for the purpose of protecting its members and for protecting the producers and consumers from unfair competitive practices.

The Board pointed out, however, that:

> . . . Price control to secure agricultural parity of purchasing power can be obtained only by agreements when binding upon both producers and processors, or by the control of production and equally the control of transportation that the movement to market may be in consonance with the effective demand.
>
> We feel that the initiation of measures designed to bring parity of purchasing power for farm products rests in and with the Agri-

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[15] *AAA Press Release No. 674-34,* Sept. 22, 1933, pp. 2-3, 5.

> cultural Department and that when and as acceptable methods are devised we will endeavor to secure the fullest co-operation to the success thereof.[16]

Between the time of sending his letter and the receipt of the Advisory Board's reply, Mr. Peek had again sounded the militant note used in his discussion of distributors' margins and practices prior to the passage of the act (see page 17). In a radio talk on September 1 he said:

> The trade agreement and licensing provisions of the Farm Act give us an opportunity to do something about preventing waste in distribution, which is distinctly in the consumer's interest, as well as the producer's. . . . Of the fifteen companies that reported the largest corporate profits made in this country in 1932, nine dealt in food and tobacco. Our biggest tobacco companies reported last year a total net profit of about 150 million dollars. That was almost as great as the entire amount of money they paid American farmers for their tobacco crop. In addition they paid to the government in taxes about 450 million dollars, which is 50 per cent more than the farmer received for his tobacco and the profits of the industry added together.
>
> When you get a situation like that, with the big distributors of farm crops making enormous profits over and above high costs of distribution, at a time when farm prices were the lowest in American history, it is worth looking into. . . . My own view is that we are suffering in this country from an over-capacity of industrial facilities for which both the farmer and the consumer are paying. . . . Agriculture is cutting down its plant, but a large part of industry is still trying to maintain boom-time capacity and capital values. This is being done at the expense of farmers and consumers.
>
> The public should no longer tolerate it. Industry must reduce its over-capacity. It cannot look for its relief by taking it out of the farmer's hide. This may mean smaller corporate profits, but fair-minded and intelligent business men know that they stand only to gain, in the end, by increasing the farmer's buying power. If the attempt were made to clamp down on him again, it would mean

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[16] The same, pp. 6-7.

> cutting the ground out from under the whole recovery program. I believe everybody in the nation should understand that. . . .[17]

In another broadcast later in September Mr. Peek repeated his statement made to the food and textile industries (page 38) when he assumed office, adding a "... welcome of the pledge from the Food Industries Board of its active co-operation. To me," he said, "it represents a social attitude that will mean much for the farmer and the nation. If this Administration succeeds in firmly implanting the policy of justice and parity for the farmers in the field of business, finance and industry will have made a great contribution to our national welfare. This concept has been eagerly sought by all who have had the interests of the farmers at heart. It has been accepted by the government as a national policy. We now have definite assurance that business will adopt it as a working principle."[18]

In spite of these courteous exchanges, however, this line of attack on the problem soon came to an impasse. The AAA had invited the food trades to draft a general or "blanket" code to be followed by special codes of fair competitive practice for the several trades. Coadministrator Brand believed that such steps would be of material benefit to our agricultural trade and price situation. The food industries warily refrained from committing themselves in any general way to this task, preferring rather to ask the AAA to proceed with such steps as it thought fit, whereupon they would consider such specific proposals on their merits. Brand was at one with the trades in his belief that such regulatory devices should be administered by the trades themselves through their own code authorities if possible, with marketing agreements second choice, and licenses only an unwelcome third alternative.

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[17] *AAA Press Release No. 521-34,* Sept. 1, 1933, pp. 4-5.

[18] *AAA Press Release No. 690-34,* Sept. 24, 1933, p. 3.

There was, however, in the AAA a large faction which despaired of any material gain through self-proposed and self-administered regulation from within the trades. They looked to making agreements which the majority of the trade could be brought to accept voluntarily, these to be made binding on the less socially minded minority through use of the licensing process. Although individuals or industries in the food trade group gave prompt and generous co-operation to specific requests made of them by the AAA,[19] the code and agreement proposals submitted by this industry group were generally regarded in the General Counsel's division, by the Consumers' Counsel staff, and in particular commodity divisions to which they were referred, as quite unacceptable.[20] More than any other thing, the question on which these proposals went aground was one of access by government representatives to books and records of the companies—ancient rock of contention at least since the Federal Trade Commission's study of the meat packing industry 20 years ago.[21]

The food trades on their part interpreted the situation as meaning that the "young liberals" were seeking to use codes, agreements, and licenses as a means of bringing about "government control of business." They therefore backed away from further effort to develop such codes and agreements and the Food Industries Advisory Board quietly faded out of the picture sometime in October. Meanwhile somewhat similar controversies were developing in connection with such milk marketing agreements as had been put in effect. Throughout this period, up to the end of 1933, something of a process of disillusionment was going on. Those who hoped to use marketing agreements and food industry codes to peg prices in their own interest, or to protect margins and handling charges, found that such proposals were sure to run against a snag at one or more places in the AAA. On the other hand, those in the Adjustment Administration who had expected substantial progress toward price enhancement or marketing reform through the use of marketing agreements were considerably dashed by the difficulties encountered.

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[19] See p. 179.

[20] See Harold B. Rowe, *Tobacco under the AAA, p.* 113; D. A. FitzGerald, *Livestock under the AAA,* p. 177.

[21] Later aspects of the continuing controversy are discussed on pp. 258, 309.

In reviewing the efforts made to utilize the marketing agreement and licensing features of the Adjustment Act in the period up to Administrator Peek's resignation in December 1933, three points stand out. First was the Administrator's desire to accomplish by this means an enhancement of farmers' prices and reduction of carry-overs sufficient to satisfy the stated purposes of the act with little or (ideally) no resort to the production control part of the measure. Second was the desire of various persons within the Adjustment Administration and of groups outside to see that any agreements drawn to secure marketing agreements (and/or codes) should stabilize the business and, so far as possible, assure the prosperity of the processors and distributors (including co-operative associations) involved in the several situations.[22] Third was the emphasis which certain persons in the Adjustment Administration placed upon the achievement of economic reforms largely in the consumer's interest through the agency of marketing agreements. Such reforms included more rigid "pure food" requirements, the reduction of advertising costs, simplification of service, and the like. The attempt to travel toward these three goals at once had resulted in procedures which consumed time, increased friction, and reduced results.

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[22] This included a desire to utilize the opportunities for concerted action and exemption from the anti-trust laws as a means of effecting economies in the conduct of their business.

The coming of a new Administrator in the person of Chester C. Davis promised to inaugurate in 1934 a greater unification of purpose within the Adjustment Administration than had been apparent in 1933 with reference to the part which marketing agreements were to play in the whole adjustment effort. This meant acceptance of the idea that production control was basic to the whole farm relief effort and that unprofitable surpluses could not be evaded by any number or kind of price, quantity, or margin agreements that processors and distributors could be induced to enter into.

Such had been the basic philosophy of Secretary Wallace throughout the life of the Adjustment Act, during the period of its drafting and passage, and for many years before, as indicated by his editorial writings in *Wallaces' Farmer*. His discussion of the marketing agreement feature during hearings on the bill[23] showed clearly that he accepted it only as a supplement to, and by no means as a substitute for, production control devices. Commenting on the act, shortly after its passage, he said: "Marketing agreements may be used on other commodities [than dairy products] to supplement a program of acreage reduction."[24] Likewise in discussing results under the act before the Senate Committee on Agriculture in January 1934, he made his whole approach in terms of production con-

[23] 73 Cong. 1 sess., *Agricultural Emergency Act to Increase Farm Purchasing Power,* Hearings on H. R. 3835 before the Senate Committee on Agriculture and Forestry, Mar. 17-28, 1933, pp. 7 ff., 128 ff.

[24] *New York Times,* June 4, 1933, Sec. VIII, p. 3.

trol, and referred even to the rice and tobacco situations which had been handled entirely through marketing agreements as showing "that satisfactory production control measures have been developed and will begin to take effect during the 1934 crop season," and that in perishable fruits and vegetables "where only marketing agreements were available under the act, material progress has been made in developing marketing agreements to regulate marketing of such products and to prevent excessive pressure of production upon the available markets."[25] After discussing the need and possibilities of production control in the livestock industry, he called attention to the fact that "a complete program for the production of all dairy products is being developed . . . and steps will be taken to secure the adherence of dairy farmers through the country to the program so that definite steps can be taken to correct the underlying oversupply situation."[26]

Later the same month he told a Wisconsin audience that:

> . . . Ever since the passage of the Farm Act, the dairy industry has been trying to find short-cuts to the Promised Land. First, it was said that no adjustment was necessary, and that in due time the general industrial recovery would put the dairyman back on his feet. Next, many of the leaders seized upon the marketing agreement section of the act as something which might bring a maximum of benefit at a minimum of trouble and risk. . . . We believe it essential that the dairy program should contain as one of its basic features such a method of production control that will restrain production to keep it in step with increases in consumer purchasing power and prevent supply from outrunning demand to the degree that causes disaster.[27]

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[25] 73 Cong. 2 sess., *Operations of the Agricultural Adjustment Act,* Hearings before the Senate Committee on Agriculture and Forestry, Jan. 18, 1934, pp. 5, 6.

[26] The same, pp. 16-17.

[27] *AAA Press Release No. 1727-34,* Jan. 31, 1934, pp. 14, 19.

Administrator Davis, although he had been an active proponent of the old McNary-Haugen measure, gave evidence long before the passage of the Agricultural Adjustment Act of having been fully converted to the view expressed by the Secretary that direct and positive measures of production control were indispensable if the stated purposes of the Adjustment Act were to be accomplished.[28] In his address before the annual convention of the National Co-operative Milk Producers' Federation at Chicago on October 9, 1933, Davis said:

> The first portion of this program [of relief for the dairy industry] —the formulation of marketing agreements covering the various fluid milk areas—is already well under way. But it has been evident for some time that a production control program for the entire dairy industry is needed.[29]

In an address to the Illinois Agricultural Association a month later, he gave clear indication that he looked upon the marketing agreement provision of the act as providing a device whereby control of supplies could be secured even in commodities not defined as basic in the act. "Since in these instances," he said, "the Administration has no authority to provide benefit payments for production control, it has been functioning largely through agreements between the Secretary of Agriculture and associations of producers and handlers. Under such an agreement the pack of the California cling peach industry was limited to the estimated demand. . . . The marketing agreement, which provides authority for national proration and a stabilization plan, covers the product of 35,000 citrus growers."[30]

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[28] "George Peek and Charles Brand held rather strongly to their original McNary-Haugen conceptions of export sales at less than the domestic market, whereas Chester Davis, who had become especially familiar with M. L. Wilson's ideas, realized from the start the necessity of reducing acreage." Henry A. Wallace, *New Frontiers,* p. 169.

[29] *AAA Press Release No. 819-34,* p. 9.

While placing major emphasis on the production control possibilities of the act, in its marketing agreement section as well as its benefit payment provisions, Davis did not fail to recognize that it had potentialities for raising farm prices through reform of marketing practices. In his review of the first year's results under the AAA, in which he stressed the beneficial results of adjustments in production, he added: "The agreements or licenses provide improved price schedules for farmers and eliminate unfair practices in processing and distribution of farm produce."[31]

Administrator Davis did not, on taking office, adopt any revolutionary tactics or make any public pronouncement of a change in policy. It became increasingly evident, however, as the weeks went by that a difference in administrative technique, if not in policy, was coming to pass. Davis threw his influence toward putting through all such proposed marketing agreements as promised real benefit to the farmer. Instead of allowing agreement efforts to fail because of doctrinaire insistence that certain ideal requirements be met, he accepted such agreements as he could get through aggressive but friendly negotiation, provided their terms seemed at all reasonable, biding his time for the accomplishing of results not obtainable at the moment.

At the same time, the idea appeared to be definitely abandoned that marketing agreements could ever be a major agency for accomplishing agricultural relief,[32] however useful they might be found by particular producer groups. The most to be expected was that they would do three things: (1) serve a temporary purpose pending the perfection of production control devices; (2) bring some enhancement of prices and stabilization of operations in those minor lines of production not eligible to benefit payment;[33] and (3) serve, to an extent as yet undetermined, to increase the economy and equitableness of distributive arrangements. The extent and nature of the results which have been secured along these lines will be discussed in our concluding chapters, after we have traced the course of actual developments in the several commodity fields.

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[30] "Building on Experience," *AAA Press Release No. 1687-34,* p. 13.

[31] "One Year of the AAA: The Record Reviewed," *New York Times,* June 3, 1934, Sec. VIII, p. 1. (Reprinted as G-14, U. S. Department of Agriculture, p. 5.)

[32] "Some people, both within and without the AAA, thought we ought to forget the adjustment programs and concentrate on marketing agreements

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between producers and processors. We were willing to work as hard and as fast as we could on both, but most of us were unwilling to shove agreements through which we knew to be economically unsound and therefore unenforceable, and which gave processors and distributors significant rights without equally significant obligations. . . . From the long-time point of view, there may be much to be hoped for from the agreement and licensing sections of the Agricultural Adjustment Act. Unfortunately, thus far the expectations of benefits from agreements have been unreasonably great." Wallace, *New Frontiers,* pp. 190, 194.

[33] The rice agreements showed that it was possible even to effect production control through marketing agreements (see Chap. VI). Furthermore, the amendment of Apr. 7, 1934, by including producers as parties to a marketing agreement, was designed to enlarge the possibility of effecting control of production under this section of the act.

CHAPTER III

VOLUME AND CHARACTER OF AGREEMENTS AND LICENSES

The preceding chapter has given a bird's-eye view of the process by which actual agreement and license arrangements emerged out of the potentialities of the Agricultural Adjustment Act. In Chapters IV to X we shall elaborate that preliminary sketch into a somewhat detailed account of developments in the principal commodity fields. Before undertaking this task, however, it seems desirable to present a brief summary of efforts up to August 1935. This will show the number of agreements and licenses that have been entered into, their regional and commodity distribution, and the principal features and combinations of devices which have characterized them.

NUMBER AND DISPERSION

The first marketing agreement became effective on August 1, 1933. It covered the handling of fluid milk in the Chicago market and was followed by 14 other fluid milk agreements between then and December 20. The Chicago agreement was cancelled as of December 20, 1933 and that of New Orleans as of February 1, 1934, both at the signatories' request. The other 13 fluid milk agreements were terminated by order of the Secretary of Agriculture on February 1, 1934. All these markets had licenses as well as agreements and the licenses were continued in force or replaced by new ones and many new licenses added as time went on (see pages 218-24). No new milk marketing agreements, however, have been put into effect.

Besides fluid milk, there were two other dairy products, namely, evaporated milk and dry skim milk, for which agreements were used. They became effective on September 9 and September 16, 1933 respectively. The latter is still in force; the former has been replaced by a new agreement of the same general character. In neither case were the members of the trade placed under license, but at the time that the new evaporated milk agreement became effective (June 1, 1935) a license was also put in operation.

The second agreement to be perfected was for California canning peaches. It became effective on August 17, 1933 and was followed between then and July 20, 1935 by 27 other agreements covering fruits, vegetables, and nuts. Six of these were simply revised agreements which took the place of others previously operative for the same commodities.

An agreement for California rice was one of the earliest to be perfected. It went into operation on September 26, 1933 and was followed on October 16 by a rice marketing agreement for the Southern states. Both gave place to a processing tax and production control program in March 1935. Along with rice, we may group an agreement covering wheat—that for export of North Pacific surplus wheat—which became effective on October 11, 1933 and which is still in force in slightly amended form, though operations have been negligible since August 9, 1934.

Tobacco also came early into the field of marketing agreement activity. Seven agreements were put into effect on four dates, ranging from September 25, 1933 to March 26, 1934. Only one of them is still in force. An agreement similar in type to the tobacco agreements was that for peanuts, effective January 27, 1934 and superseded on

October 1, 1934 by a processing tax and production control program.

Finally, there have been several agreements of such miscellaneous character as to fit into none of the ordinary agricultural commodity groups. The most prominent are those formulated for the alcoholic importing and distilled spirits industries, both in December 1933. These, however, lie outside the agricultural field in which we are interested except as they contain provision for the paying of "parity" prices for such agricultural products as are used. Responsibility for regulation of processors or distributors of alcoholic beverages was soon shifted over to a new control agency, the Federal Alcohol Control Administration. Also of little agricultural significance were two agreements for gum turpentine and gum rosin processors and for bee shippers respectively. Hearings were held late in 1933, and the agreement for turpentine and rosin became effective in February and the one for shippers of package bees and queens in May 1934. A full list of marketing agreements with their effective dates is presented in the table on page 53.

Excluding the four agreements not agriculturally significant, and six that were no more than amendments, we have 51 marketing agreements to consider. Seventeen apply to dairy products, 22 fall in the horticultural field, 7 cover tobacco, and 5 make up a rather miscellaneous group, all of which, however, are generally referred to as "field crops"—wheat, rice, and peanuts. Only two agreements—dried and evaporated milk—are national in form. Most of them are local or narrowly regional in their scope of operation. The fluid milk marketing agreements cover metropolitan areas from Boston to San Francisco and from Minneapolis to New Orleans. The horticultural agree-

Marketing Agreements Approved, 1933-35

Title	No.	Effective	Terminated
Chicago milk shed	1	Aug. 1, 1933	Dec. 20, 1933
Cling peaches canned in California	2	Aug. 17, 1933	July 31, 1934[a]
Philadelphia milk shed	3	Aug. 25, 1933	Feb. 1, 1934
Detroit milk shed	4	Aug. 27, 1933	Feb. 1, 1934
Twin City milk area	5	Sept. 2, 1933	Feb. 1, 1934
Calif. deciduous tree fruits, except apples	6	Sept. 2, 1933	Aug. 1, 1935[a]
Evaporated milk	7	Sept. 9, 1933	May 31, 1935[a]
Dry skim milk	8	Sept. 16, 1933	—
Flue-cured tobacco	15	Sept. 25, 1933	Mar. 31, 1934[b]
California rice industry	10	Sept. 26, 1933	Mar. 18, 1935
Baltimore milk area	9	Sept. 29, 1933	Feb. 1, 1934
Handlers of fresh California Tokay grapes	11	Sept. 30, 1933	Sept. 14, 1935
Packers of walnuts grown in Calif., Ore., Wash.	12	Oct. 9, 1933	—
Knoxville, Tenn., milk production area	13	Oct. 9, 1933	Feb. 1, 1934
Disposal of North Pacific wheat surplus	14	Oct. 11, 1933	—
Handlers of Northwest deciduous tree fruits	16	Oct. 14, 1933	—
Southern rice milling industry	17	Oct. 16, 1933	Mar. 6, 1934[a]
Evansville, Ind., milk shed	18	Oct. 23, 1933	Feb. 1, 1934
Des Moines milk area	19	Oct. 25, 1933	Feb. 1, 1934
New Orleans, La., milk production area	20	Oct. 28, 1933	Feb. 1, 1934
Greater Boston milk market	21	Nov. 3, 1933	Feb. 1, 1934
Alameda County, Calif., milk shed	22	Nov. 7, 1933	Feb. 1, 1934
Los Angeles milk shed	23	Nov. 17, 1933	Feb. 1, 1934
St. Louis milk production area	24	Nov. 22, 1933	Feb. 1, 1934
Alcoholic importing industry	25	Dec. 1, 1933	Sept. 24, 1934
Fire-cured and dark air-cured tobacco, Types 21, 22, 23, 24, 35, and 36	37	Dec. 1, 1933	July 15, 1934[b]
Dark air-cured tobacco, types 35, 36, and 37	38	Dec. 1, 1933	July 15, 1934[b]
Buyers of stemming grades of cigar-leaf tobacco, types 41-44, 51-55	46	Dec. 1, 1933	June 30, 1934[b]
Distilled spirits industry	27	Dec. 10, 1933	Apr. 18, 1934
Connecticut Valley shade-grown tobacco	28	Dec. 11, 1933	—
Burley tobacco	34	Dec. 11, 1933	Apr. 15, 1934[b]
California ripe olive canning industry	26	Dec. 13, 1933	July 15, 1934
Citrus fruits grown in Florida	29	Dec. 14, 1933	Aug. 13, 1934[a]
Oranges and grapefruit grown in Calif. and Ariz.	30	Dec. 14, 1933	—
San Diego milk shed	31	Dec. 15, 1933	Feb. 1, 1934
Richmond, Va., milk area	32	Dec. 20, 1933	Feb. 1, 1934
Oranges and grapefruit grown in Texas	33	Dec. 26, 1933	—
Peanut millers	35	Jan. 27, 1934	Oct. 1, 1934
Gum turpentine and gum rosin processors	36	Feb. 21, 1934	Aug. 5, 1934
Southern rice milling industry	39	Mar. 6, 1934	Apr. 1, 1935
Fresh asparagus grown in California	40	Mar. 17, 1934	Apr. 3, 1935[a]
Fire-cured and dark air-cured tobacco, types 21, 22, 23, 24, and 36	41	Mar. 26, 1934	July 15, 1934[b]
Florida celery industry	42	Apr. 28, 1934	—
Shippers of package bees and queens	43	May 6, 1934	—
Packers of California raisins	44	May 29, 1934	Sept. 14, 1935
California date shippers	45	June 8, 1934	—
Canners of cling peaches grown in California	47	July 6, 1934	June 30, 1934
Shippers of Southeastern potatoes	48	July 13, 1934	—
Shippers of fresh lettuce, peas, and cauliflower grown in western Washington	49	July 21, 1934	—
Shippers of Florida strawberries	50	Aug. 5, 1934	—
Handlers of Gravenstein apples	51	Aug. 5, 1934	—
Watermelons, Southeastern states	52	Aug. 10, 1934	—
Dried prunes produced in California	53	Aug. 17, 1934	Aug. 9, 1935[b]
Shippers and producers of fresh peaches, Colo.	54	Nov. 6, 1934	—
Citrus fruits grown in Florida	55	Dec. 18, 1934	July 15, 1935
Colorado fresh peas and cauliflower	56	Jan. 15, 1935	—
Paper-shell pecan industry	57	Mar. 13, 1935	—
California fresh asparagus	58	Apr. 3, 1935	—
California canning asparagus	59	Apr. 3, 1935	—
Evaporated milk industry	60	June 1, 1935	—
California deciduous tree fruits except apples	61	July 20, 1935	—

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[a] Superseded by new agreement.

[b] Except parts necessary to complete previous season's operations.

ments are localized in the Southeastern states and the Pacific Coast region, except for two in Colorado and one in Texas. The wheat, rice, and peanut agreements affect much the same Pacific Coast and Southern and Southeastern regions, whereas the field of tobacco agreements ranges from Connecticut to Florida and westward to Kentucky and Wisconsin. In general, marketing agreements, except those for dairy products, have been conspicuously absent from the Northeastern region and from the Central and Mountain territory.

Broadly speaking, the use of licenses has paralleled that of marketing agreements. Of 26 agreements covering "general crops" only one has been made effective without being accompanied or promptly followed by a license. This exception was the Colorado peach agreement. It was approved after the close of the 1934 crop-moving season. No license was required at that time, and when the agreement was put in effect this year the constitutionality of the license provision was under too much doubt. Of the two rice marketing agreements, that for the Southern states was accompanied by a license, whereas the agreement for the California rice industry was in force for 15 months without a license. On December 21, 1934, however, the California rice millers were brought under license. The North Pacific wheat export agreement was not accompanied by a license, nor were six of the seven tobacco marketing agreements. In the dairy products field all the 15 fluid milk agreements made effective during 1933 had parallel licenses but not the two agreements covering dried and evaporated milk. When the fluid milk marketing agreements were cancelled in December 1933 and January 1934 the licensing system was continued in force and new licenses (without agreements) have been added covering other milk markets. At the end of the year 1934 there were 50 such milk marketing licenses in force. There was also one other license unaccompanied by a marketing agreement, this covering the asparagus canning industry of California (see page 176).

What has already been said concerning the geographic and commodity dispersion of marketing agreements naturally applies with almost equal force to the use of licenses. The only difference to be noted is that the increase in the number of fluid marketing licenses brought this procedure into use in sections of the country where no other market adjustment efforts took place.

While the use of industrial codes for the regulation of processors and distributors bears only indirectly on the problem of agricultural adjustment, a brief comment may be in order. The majority of marketing agreements and licenses include provisions covering trade practices and in one case (the Southern rice milling industry) there is a separate detailed code to accompany the agreement and license. There have also been six codes covering alcoholic beverages and 11 others relating more or less closely to the farmer's interest. Up to the close of 1934 there had been 18 codes put in force under joint AAA-NRA supervision.[1] Growers of grain other than rice have a concern, to a greater or less extent, in five of these codes, namely those regulating the grain exchanges (including terminal elevators), wheat flour millers, country grain elevators,[2] feed manufacturers, and linseed oil manufacturers. The other

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[1] On Jan. 7, 1935 a code for the malt industry was made effective. Of some 40 codes approved in Division VI of NRA after re-transfer from AAA (see p. 31), only four have any considerable interest to the farmer, namely those for canners, for pecan shellers, for raw peanut millers, and for the wholesale tobacco trade.

[2] The principal codes concerned with wheat are discussed in J. S. Davis, *Wheat and the AAA*, pp. 205 ff.

LICENSES ISSUED, 1933-35

Title	No.	Effective	Terminated
Chicago milk shed	1	Aug. 1, 1933	Jan. 8, 1934[a]
Cling peaches canned in California	2	Aug. 17, 1933	July 12, 1934[a]
Philadelphia milk shed	3	Aug. 25, 1933	July 1, 1935
Detroit milk shed	4	Aug. 27, 1933	Apr. 1, 1934[a]
Twin City milk area	5	Sept. 2, 1933	Feb. 16, 1934[a]
Baltimore milk area	6	Sept. 29, 1933	Aug. 1, 1934[a]
Calif. deciduous tree fruits, ex. apples	7	Oct. 9, 1933	—
Packers of walnuts grown in California, Oregon, and Washington	8	Oct. 11, 1933	—
Handlers of fresh California Tokay grapes	9	Oct. 14, 1933	Sept. 14, 1935
Southern rice milling industry	11	Oct. 17, 1933	—
Evansville, Ind., milk shed	12	Oct. 23, 1933	Feb. 26, 1934[a]
Knoxville, Tenn., milk area	10	Oct. 28, 1933	June 24, 1934
Des Moines milk area	13	Oct. 28, 1933	Feb. 14, 1934[a]
Northwest fresh deciduous tree fruits	27	Oct. 28, 1933	—
New Orleans milk production area	14	Oct. 31, 1933	Feb. 1, 1934[a]
Greater Boston milk market	15	Nov. 3, 1933	Mar. 16, 1934
Alameda County, Calif., milk shed	16	Nov. 14, 1933	July 1, 1934[a]
Los Angeles milk shed	17	Nov. 20, 1933	June 1, 1934
St. Louis milk	18	Nov. 25, 1933	Mar. 2, 1934
Alcoholic beverage import industry	19	Dec. 10, 1933	Sept. 24, 1934
California ripe olive canning industry	20	Dec. 13, 1933	—
Distilled spirits	21	Dec. 13, 1933	Apr. 18, 1934
Citrus fruits grown in Florida	22	Dec. 18, 1933	Aug. 13, 1934[a]
Oranges and grapefruit, Calif.-Ariz.	23	Dec. 18, 1933	—
San Diego milk shed	24	Dec. 18, 1933	Feb. 1, 1935[a]
Richmond milk	25	Dec. 20, 1933	May 1, 1934[a]
Oranges and grapefruit grown in Tex.	26	Dec. 26, 1933	—
Connecticut shade-grown tobacco	28	Jan. 17, 1934	—
Peanut millers	29	Jan. 27, 1934	Sept. 29, 1934
Chicago milk area	30	Feb. 5, 1934	Mar. 2, 1935
Des Moines milk area	31	Feb. 14, 1934	—
Twin City milk area	32	Feb. 16, 1934	—
Omaha-Council Bluffs milk	33	Feb. 23, 1934	—
Evansville, Ind., milk	34	Feb. 26, 1934	—
St. Louis, Mo., milk	35	Mar. 1, 1934	—
California canned asparagus	36	Mar. 6, 1934	—
Gum turpentine and rosin processors	37	Mar. 13, 1934	Aug. 5, 1935[b]
Greater Boston milk	38	Mar. 16, 1934	—
Greater Kansas City milk	40	Mar. 17, 1934	—
Lincoln, Neb., milk	41	Mar. 17, 1934	—
New Orleans milk	42	Mar. 17, 1934	Mar. 14, 1935
Sioux City milk	43	Mar. 17, 1934	—
Wichita milk	44	Mar. 17, 1934	—
Fresh asparagus grown in California	39	Mar. 20, 1934	Apr. 3, 1935
Indianapolis milk	45	Apr. 1, 1934	Feb. 28, 1935
Providence milk	46	Apr. 1, 1934	Apr. 4, 1935[c]
Newport milk	47	Apr. 1, 1934	—
Fall River milk	48	Apr. 1, 1934	—
New Bedford milk	49	Apr. 1, 1934	—
Detroit milk	50	Apr. 1, 1934	—
Florida celery industry	51	May 1, 1934	—
Richmond milk	52	May 1, 1934	—

LICENSES ISSUED, 1933-35 (*Continued*)

Title	No.	Effective	Terminated
Lexington milk	53	May 2, 1934	July 16, 1935
Shippers of package bees and queens	54	May 6, 1934	—
Leavenworth milk	56	May 16, 1934	—
Packers of California raisins	59	May 31, 1934	Sept. 14, 1935
Los Angeles milk	57	June 1, 1934	July 1, 1935
Quad Cities milk	58	June 1, 1934	—
Louisville milk	60	June 1, 1934	—
California date shippers	61	June 11, 1934	—
Oklahoma City milk	62	June 16, 1934	Mar. 15, 1935
Alameda County (Oakland) milk	63	July 1, 1934	Sept. 1, 1935[c]
Fort Wayne milk	64	July 1, 1934	—
Ann Arbor milk	65	July 1, 1934	—
Battle Creek milk	66	July 1, 1934	—
Bay City, Mich., milk	67	July 1, 1934	July 26, 1935
Flint, Mich., milk	68	July 1, 1934	—
Grand Rapids milk	69	July 1, 1934	—
Kalamazoo milk	70	July 1, 1934	—
Lansing milk	71	July 1, 1934	July 26, 1935
Muskegon milk	72	July 1, 1934	July 26, 1935
Port Huron milk	73	July 1, 1934	Mar. 2, 1935
Saginaw milk	74	July 1, 1934	July 26, 1935
California cling peaches	75	July 12, 1934	July 4, 1935
Wood turpentine & rosin processors	55	July 14, 1934	—
Southeastern potatoes	76	July 14, 1934	—
Gum turpentine and rosin agents, factors, & commission merchants	77	July 14, 1934	Aug. 5, 1935
Gum turpentine & rosin distributors	78	July 14, 1934	Aug. 5, 1935
Fresh lettuce, peas, and cauliflower grown in western Washington	79	July 21, 1934	—
Baltimore milk	80	Aug. 1, 1934	Feb. 26, 1935
Shippers of Florida strawberries	81	Aug. 5, 1934	—
Handlers of Gravenstein apples	82	Aug. 5, 1934	—
Watermelon industry, S. E. states	83	Aug. 10, 1934	—
Savannah milk	84	Aug. 16, 1934	Sept. 1, 1935[c]
Dried prunes produced in California	87	Aug. 17, 1934	—
Tulsa milk	86	Aug. 21, 1934	—
Denver milk	85	Sept. 1, 1934	—
Fort Worth milk	88	Sept. 1, 1934	July 1, 1935
San Francisco milk	89	Oct. 2, 1934	Sept. 1, 1935[c]
Southern Illinois milk	90	Nov. 1, 1934	—
Phoenix milk	91	Nov. 10, 1934	—
Topeka milk	92	Nov. 10, 1934	—
Atlanta milk	93	Dec. 1, 1934	—
Dubuque milk	94	Dec. 5, 1934	—
Citrus fruit grown in Florida	95	Dec. 18, 1934	July 15, 1935
California rice	96	Dec. 21, 1934	Sept. 14, 1935[b]
Colorado fresh peas and cauliflower	97	Jan. 15, 1935	—
San Diego, Calif. milk	98	Feb. 1, 1935	—
Tucson, Ariz. milk	99	Apr. 16, 1935	—
Evaporated milk	100	June 1, 1935	—

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[a] Superseded by new agreement.

[b] Except parts necessary to complete previous season's operations.

[c] Suspended.

six codes cover wholesale fresh fruit and vegetable distributors, the New York City live poultry industry, "baby chick" hatcheries, tobacco warehouses, hog cholera virus and serum, and the beet-sugar industry. The accompanying table lists the agricultural codes in chronological order.

CODES APPROVED, 1933-35

Title	No.	Effective Date
Imported date packing industry	1	Nov. 11, 1933
Southern rice milling industry	2	Nov. 21, 1933
Distilled spirits industry	3	Nov. 26, 1933
Alcoholic beverages importing industry	4	Dec. 2, 1933
Brewing industry	5	Dec. 4, 1933.
Alcoholic beverage wholesale industry	6	Dec. 9, 1933
Distilled spirits rectifying industry	7	Dec. 9, 1933
Commercial and breeder hatchery industry	8	Dec. 27, 1933
Wine industry	9	Dec. 27, 1933
Anti-hog cholera serum and hog-cholera virus industry	10	Mar. 6, 1934
Grain exchanges and members thereof	11	Mar. 20, 1934
Linseed oil manufacturing industry	13	Apr. 20, 1934
Country grain elevator industry of the United States	14	May 21, 1934
Live poultry industry of the metropolitan area in and about the city of New York	12	Apr. 23, 1934 (Amended Sept. 25, 1934)
Feed manufacturing industry	15	June 4, 1934
Wheat flour milling industry	16	June 13, 1934
Auction and loose-leaf tobacco warehouse industry	18	July 9, 1934
Wholesale fresh fruit and vegetable industry	17	July 16, 1934
Malt industry	19	Jan. 7, 1935

TYPES OF PROBLEMS COVERED BY AGREEMENTS

We have already noted that the Agricultural Adjustment Act did not lay down a precise definition of a marketing agreement or prescribe definite boundaries to the matters which it might cover. In practice, agreements range all the way from particular market deals of definitely limited time duration up to elaborate covenants regulating and sometimes drastically modifying the pre-existing marketing machinery for a commodity until the present emergency shall be declared at an end, if not indeed permanently. There are too many features embodied in the various marketing agreements and too many combinations of these several features to permit of a classification which would put each agreement in its appropriate pigeon-hole. It may serve to clarify the subject, however, if we conclude this résumé of the scope and character of marketing agreements by a brief description of the major matters which they deal with, together with comments as to the relative frequency with which the several provisions appear or the emphasis placed upon them in practice.

Improved distribution of supplies. A large number of agreements set up new machinery or strengthen previously existing machinery for securing more adequately informed and better co-ordinated movement of shipments to the several markets in proportion to their several needs as measured by ability or willingness to pay. (See Chapters VII, VIII, and IX.)

Deferring of shipment or sale. Manipulation of supply in the interest of price enhancement is found in many marketing agreement provisions for holding back products at the farm or orchard, the local warehouse, or the terminal market until what is regarded as oversupply can be relieved and the withheld goods absorbed at a better price or without depressing the previous level. In the case of non-perishables or semi-perishables, this will not reduce the total supply eventually offered in the market. In the case of perishables it amounts to passive destruction of the product to a greater or less extent. (See Chapters VII and XIV.)

Prohibition of marketings. The deferring of marketings merges into actual prohibition. A few agreements, instead of ordering a suspension of shipments for a specified period (during which part of the supply is lost), order the termination of marketing before the crop is all harvested or prohibit marketing prior to a date somewhat after the product has become ready for shipment. Others prohibit or limit the sale of certain grades or classes of the product, thus restricting the total supply made available to consumers. (See pages 120, 131, 175, 297, 322 ff.)

Diversion to by-product uses or lower priced markets. Withholding practices are in some agreements supplemented by the development of by-product uses, the gift of product to charitable agencies, or its diversion to consumer groups, domestic or foreign, who are not in competitive contact with the markets in which the product is ordinarily sold. The latter course may combine the advantages of yielding a salvage price on goods which would otherwise be wasted with the building up of consumer preference or good-will which may some day benefit the general market for the product. In the case of nonperishables, this may involve direct or indirect subsidy to draw off accumulated supplies from the current market into either export or domestic outlets. (See pages 93, 104, 117, 173, 186, 201, 337.)

Agreement on prices and volume of takings. A feature of a few marketing agreements which has been of a temporary character has been the securing of a direct commitment on the part of buyers that they will maintain a certain price level and a stipulated volume of purchases. This shades over into the pre-existing types of collective bargaining used by many co-operatives. Marketing agreements under the AAA, however, by bringing all buyers in either voluntarily or by license, give each buyer assurance (in proportion as they are enforced) that his competitors will not be able to buy on more favorable terms than he. (See Chapter V and page 179.)

Regulation of trade practices. Most marketing agreements contain provisions regulating trade practices so as to prevent any dealer or processor from evading the spirit of an agreement through "irregular" competitive practices even though he was keeping the letter of its price or other terms. (See pages 91, 109, 307-08, and index.)

Control of charges or margins. Closely allied to the preceding type of regulation are the provisions found in most marketing agreements designed to insure that the benefits of price enhancement shall be passed on to producers and not absorbed in expanded fees, commissions, storage charges, or the like. (See pages 91, 97, 104, 109, and 304.)

Substituting a new price-making system. In a number of cases careful scrutiny of the provisions of marketing agreements will reveal the fact that they virtually displace a traditional and sometimes rather primitive system of dealing and price making by a more elaborate system which may properly be described as economically sophisticated. This phrase may sound unduly cryptic, but the idea hardly admits of brief and simple expression. It will be developed further with reference to milk in Chapter X and in general in Chapter XIV.

Minimum prices to growers. These minima are distinguishable from the volume and price bargains listed above in that no commitment was made as to the amount of goods to be taken. Likewise these minimum prices were subject to change from time to time at the discretion of the respective control committees. (See pages 96, 103, 108, 143, 167, 174, 182 ff., 342.)

Open-price provisions. Three marketing agreements supplement their provisions for control of shipments not by the stipulation of minimum prices but by a provision authorizing the administrative authority to require all shippers to post their price schedules and to file this information with the administrative authority in order that it may be transmitted to all other licensees. (See pages 140, 344.)

Trade and consumer price controls. These provisions, though found in only a few agreements, took on rather complicated forms and are aimed at rather diverse objectives. In general they are designed to protect the producer against pressures growing out of competitive cutting of consumer prices by a distributor as a means of enlarging his share of the business, or to protect distributors from the competition of those of their members who would be inclined to narrow their margin either permanently or as a temporary means of attracting business. (See Chapter X and pages 97, 103, 108, 168, 307.)

Control of current or future production. In the main, marketing agreements have sought merely to handle current supplies, uncontrolled as to farmers' scale of production, in such a way as to net a larger return to growers. A few marketing agreements, however, have included provisions for assuring or making more probable some check in the rate at which supplies will be forthcoming. While other sections of the law embody other and probably more effective devices for production control than could ever be developed through marketing agreements, the latter have shown themselves not without potentialities along this line. (See Chapters VI and X.)

No attempt is made here to develop any critical analysis of the manner in which any of these provisions actually work or the results which have followed from including them in agreements or licenses. This task is reserved for our closing chapters. As a foundation for that undertaking, we shall first proceed in the next nine chapters to present a descriptive and historical account of the several commodity programs under Sections 8(2) and 8(3) of the act.

CHAPTER IV

THE WHEAT EXPORT AGREEMENT

We begin our discussion of specific lines of action undertaken under the marketing agreement provisions of the Agricultural Adjustment Act with an examination of the North Pacific wheat export agreement. This phase of marketing agreement activity is put first not because it came first in time or is to be considered as the most typical or because the operation has been the greatest in magnitude or has attracted chief public interest. Nor does it promise to bulk largest among future undertakings in the marketing agreement field. Quite the contrary. The Secretary of Agriculture let it be known from the start that he regarded this as an exceptional expedient dictated by a particular situation of distress.[1] Though regarding it as fortunate that this procedure was made possible under the broad powers of the act, he did not intend it to be regarded as an accepted part of AAA policy.

The reason which impels us to begin our discussion of specific agreements with an account of the wheat export operation is that it exemplifies so clearly the continuity of the agricultural adjustment undertaking with other plans of farm relief which had been evolving for more than a decade. In particular it illustrates the point made in our introductory chapter to the effect that the Agricultural

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[1] This view was emphasized in official announcements that appeared in connection with the initiation of the program and was formally incorporated in Section 15 of the agreement, which reads: "The plans and arrangements herein specified shall not be considered as the adoption of any definite form of policy by the Secretary, but this agreement and the terms of the exhibits hereto attached shall be considered only as being necessary for the solution of the present critical condition in the aforesaid Pacific Northwest area."

Adjustment Act traced its lines of descent not merely to the domestic allotment plan but also to the several McNary-Haugen bills. The essence of these measures had been the promotion of export sale of such portion of the crop as was necessary to maintain a desired domestic price level. The facilitation, though not the actual subsidizing, of exports had also been to a degree included within the orbit of Federal Farm Board efforts to assist the wheat industry. Not only had the Grain Stabilization Corporation held a large part of carry-over stock in order to support domestic prices but it had disposed of some of its holdings abroad at a loss which eventually fell on the revolving fund. Likewise the Reconstruction Finance Corporation had been specifically authorized to assist the foreign movement of agricultural commodities by making loans "for the purpose of financing sales of such surpluses in the markets of foreign countries in which such sales cannot be financed in the normal course of commerce."[2]

When it came to the drafting of the Agricultural Adjustment Act, Mr. Peek's confidence in the promotion of sales abroad rather than in the curtailment of domestic supplies was, as we have already noted, an influential factor in causing the marketing agreement provision to be added to the Agricultural Adjustment bill. Experience

[2] Emergency Relief and Construction Act of 1932 (47 Stat. L. 709).

While no agricultural export financing was effected under this section prior to the passage of the Agricultural Adjustment Act, it was thereafter utilized for the extension of loans covering both cotton and wheat. On June 4, 1933 announcement was made of the establishment of a credit of 40 million dollars to the Chinese government for cotton purchases and 10 million dollars for wheat and flour purchases in this country. The latter will be discussed later in this chapter. On July 3, the Reconstruction Finance Corporation announced an agreement to finance sales of from 60,000 to 80,000 bales of cotton by American exporters to Russia. *RFC Press Releases Nos. P-729* and *P-802.*

The Corporation's quarterly report of Sept. 30, 1934 shows loan authorizations of 52.9 million dollars, disbursements of 19.0 million, and 30.1 million withdrawn or cancelled.

thus far under the act has not shown the Adjustment Administration placing any considerable reliance on subsidized export as an agency for the improvement of agricultural prices. It is perhaps all the more important therefore that before considering the types of activity that have been more prominent in the AAA program we examine the outstanding case of export effort to see what success attended it.

BACKGROUND AND FORMULATION OF THE AGREEMENT

The wheat industry had throughout the agitation for farm relief been universally regarded as the chief or at least one of the most outstanding candidates for government aid. By the time actual operations under the Agricultural Adjustment Act got under way in the summer of 1933, however, a curious turn of circumstances relieved it of its exigent claims to aid, and thrust cotton and hogs forward as the two commodities most in need of sweeping emergency treatment. Drought conditions over a considerable portion of the wheat belt so reduced crop prospects that surplus production could hardly be said to threaten the wheat industry as a whole.[3] The general adjustment program was therefore so cast as to defer acreage reduction measures to the 1934 and 1935 crops.

For the Pacific Northwest wheat area, however, the situation by no means paralleled that of the country as a whole. Wheat growers of these states—Washington, Oregon, and northern Idaho—devote major attention to the production of certain types of white wheats which have a somewhat specialized market at home and abroad.

[3] For a fuller discussion of this and other aspects of the wheat export agreement, see J. S. Davis, *Wheat and the AAA,* Chap. IX, and "Pacific Northwest Wheat Problems and the Export Subsidy," *Wheat Studies of the Food Research Institute,* August 1934, Vol. 10, No. 10.

The export market had in recent years not furnished a satisfactory outlet, partly as a result of heavy Australian production. Prices fell to unprecedentedly low levels in 1932-33 and the carry-over in Northwest markets on July 1, 1933 was estimated at 40 per cent above the previous record in 1931.

In his rather qualified acceptance of the program of production curtailment, Administrator Peek had emphasized the view that the removal of supplies should take place only in those parts of the producing territory where there was specific excess, rather than being made to apply to all areas regardless of whether local supplies were excessive, normal, or deficient.[4] Hence he was not only agreeable to the proposal that some sort of export aid be provided to the Pacific Northwest, but also willing to experiment with the marketing agreement as a means to that end.[5] This might prove an effective stop-gap arrangement pending the development of a production control program for the whole wheat industry, or it might demonstrate that marketing agreements would be all that was needed to bring "parity" prices.

Both wheat growers and handlers in the Pacific Northwest were practically unanimous in urging some measure of government assistance to export trade. Rather than accept extremely low export prices in 1932-33, growers there had held wheat firmly. The Pacific Northwest had not been participating as fully as had other sections in the sharp rise in wheat prices which took place from April to mid-July as a result of crop damage in the winter-wheat and part of the spring-wheat belt and as a result of the stimulating effects of inflationary and speculative forces growing out of other developments of the New Deal. Such rise as they had secured put their prices still further out of line with those in Oriental markets, and so drew more wheat from Australia and even Argentina. Since the exportable surplus failed to flow out, supplies accumulated at terminals and shipping points until storage facilities were so seriously congested with carry-over stocks as to interfere with the proper handling of the new crop. Hence grain exporters and elevator interests joined the producers as urgent advocates of some step which would facilitate export movement of some 35 million bushels of wheat. Bankers were also interested lest the failure to open export markets would cause prices to decline to a point where outstanding credit could not be liquidated. The millers were ready to support the move if it could be handled in such a way as to improve or at least not harm their flour trade at home and abroad.

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[4] See pp. 14-15.

[5] Such a procedure involved not only the powers conferred in Section 8 (2) of the act but also Section 12 (b), which reads: "In addition to the foregoing [administrative expenses and rental and benefit payments] the proceeds from all taxes imposed under this title are hereby appropriated, to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products."

A processing tax of 30 cents per bushel on wheat was imposed beginning July 9, 1933. As early as July 24, the Secretary of Agriculture announced that 2 cents of this amount would be set aside for the purpose of financing wheat exports if occasion should demand it.

Wheat growers and millers in other sections of the country tended to support rather than oppose special measures for the relief of the Pacific Northwest since the relatively low level of prices and the restriction of exports from that area were throwing soft white wheat into the markets of the Southwest and Southeast, thus weakening prices there.

Wheat growers of the Northwest had always been active supporters of the McNary-Haugen plan, and their cooperative association, the North Pacific Grain Growers, Inc., along with the North Pacific Grain Dealers Association, now took an aggressive part in pushing the proposal for an export agreement embodying similar principles. Informal hearings were held in Portland on August 21 to discuss proposals for a marketing agreement under which regional wheat prices might be raised by some form of absorption of loss on exports. The North Pacific Grain Growers, Inc. proposed an export pool under their own administration. The grain exporters' association suggested either a flat bounty of 30 cents per bushel or other suitable amount or as an alternative a flexible bounty sufficient in amount to keep the North Pacific market in a fixed relationship to Chicago wheat prices. The millers urged certain considerations designed to protect their interests in the domestic export flour business.

At the close of this conference a drafting committee, made up of representatives of the growers, the exporters, the millers, and the bankers, was set up. The committee's draft proposal was sent to Washington, where it was revised and returned to the Northwest for a formal hearing at Portland on September 15–17. Again the millers were much in evidence with demands for special protection which representatives of the other interests regarded as excessive. After lengthy discussion, however, the major differences were sufficiently ironed out so that the AAA plan was accepted without serious modification. Producers, with the support of the AAA, secured representation equal to that of the exporters and millers. The final adjustment of details of this draft agreement consumed nearly a month so that the marketing agreement for disposal of North Pacific wheat surplus did not become effective until October 11, 1933.

TERMS OF THE AGREEMENT

The AAA did not accept the proposal of either the North Pacific Grain Growers, Inc. or the North Pacific Grain Export Association, each of whom had sought to become the agency through which the export operation should be carried out. Instead, the agreement set up a new agency known as the North Pacific Emergency Export Association. Operations were to be in charge of an executive committee of nine members, two representing the North Pacific Grain Growers, Inc., two the Farmers' National Grain Corporation (the national co-operative marketing agency), two the North Pacific Grain Export Association, two the North Pacific Millers Association, and one representative of the Secretary of Agriculture. Each of the four producer, processor, and trade interests was given one vote, and the Secretary's representative had a fifth vote in actions of this executive committee. The committee appointed a managing agent subject to the approval of the Secretary of Agriculture.[6] His actions, like those of the executive committee and the association, were to be subject to the approval of the Secretary. Section 4 of the agreement provided that:

> The Secretary may, from time to time, give written instructions to the executive committee of the association, or its duly appointed managing agent, directing such association to contract for the purchase of wheat, produced in the aforesaid Pacific Northwest area, for the purpose hereinafter provided. Such written instructions may, in the discretion of the Secretary include any or all of the following:
>
> (a) The quantity of wheat to be so purchased, which purchases

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[6] The managing director chosen was a man of long experience in the grain trade of the Orient; a prominent exporter was made vice-president of the association; and the president of the North Pacific Grain Growers, Inc., was also made president of the export association.

shall be made on the basis set forth in Exhibit A attached hereto and by this reference made a part hereof;

(b) The price to be paid for the same and the terms of said purchase; and

(c) The persons from whom such purchases are to be made, whether from producers, associations of producers, local or terminal warehouses, or others.

As to the plan of operation the export association was to "serve as a clearing house for arranging details of purchasing, shipping, handling, and selling the wheat and/or flour purchased for export or otherwise." In practice, these powers were exercised by the resident representative of the Secretary of Agriculture, acting in consultation with the Chief of the wheat processing and marketing section in Washington, who was in touch with AAA officials and the Secretary himself.

Members of the association[7] continued the physical handling of grain in substantially the same manner as they had prior to the formation of the export association, but legal title to grain for export passed to the association between the time of purchase from the producer and sale to the foreign importer. The association was free to acquire grain according to its judgment of the possibilities of moving it to foreign markets, subject, however, to the limitation that it should at no time have "outstanding net purchases in excess of one million bushels of wheat against which excess there are no outstanding sales or contracts for sales."

For the disposal of wheat which it had acquired the association each day received written bids from its members for wheat which they desired to sell as grain or flour in export trade. The Secretary's resident representative then advised the managing agent what bids to accept,[8] and stated the prices at which the association would sell to the exporter to consummate the sale. The difference between these two prices, with certain standard adjustments, was the amount for which the exporter was entitled to claim reimbursement from the Secretary of Agriculture. Similar arrangements were made in the case of flour sold for export. Sales to the Chinese government, under a 10 million dollar loan made by the Reconstruction Finance Corporation in June 1933, called for some special arrangements.[9] Operating expenses of the association were defrayed by assessment on members in proportion to transactions cleared through it.

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[7] Membership was open to producers, producers' associations, exporters, or exporters' associations having the necessary handling or processing facilities. All such persons, firms, or corporations who desired to operate under the plan were required to sign the agreement and be approved by the Secretary of Agriculture.

OPERATION AND RESULTS

Purchases under the wheat export agreement were begun on October 19, 1933, and the first sales effected on October 31. Thereafter operations proceeded actively until checked by shipping difficulties due to the longshoremen's strike which began on May 9 and continued through July 1934. On May 12 total wheat and flour sales by the export association amounted to 25.7 million bushels. Subsequent sales were retarded not only by the shipping strike but also by two other influences. First,

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[8] For the simplification of practice, there was named each day in advance a schedule of prices at which deals would be accepted up to a specified amount during the ensuing 24 hours.

[9] Purchases to fill sales to the Chinese government were allocated among the trade at first on a tentative basis and after the first three months on the basis of other export sales up to that time. Other purchases were distributed among the trade on a basis which somewhat favored the growers' organization.

China had exhausted the portion of the loan (60 per cent) that was earmarked for wheat purchases, her mills were well supplied with wheat, and her millers strongly opposed to government imports of flour. In July and August, however, two important sales of flour were made under this loan. Second, the crop shortage east of the Rockies reached such proportions that it looked as if the Pacific Northwest surplus would be needed in this country. From August 9, accordingly, operations under the agreement were practically suspended in the face of continued pressure from the Pacific Northwest for renewal of subsidized exports.

Total sales and shipments under the agreement amounted to 28.4 million bushels, considerably less than the objective of 35 million bushels originally proposed. Since yields in the Pacific Northwest were not reduced by drought as were those of other sections, the carry-over in that region was only moderately reduced. The amount of the subsidy averaged 23 cents and the total subsidy cost about 6.5 million dollars. This fell well within the limits of the funds available for the purpose from the 2-cent reserve from the processing tax on wheat.

The carrying out of the wheat export agreement did not encounter any serious administrative difficulties and the results were generally regarded as distinctly advantageous to the Pacific Northwest. However, exporters felt that the system was much too cumbersome. They also claimed that several hundred thousand dollars more should have been paid them under the agreement. Some of the millers complained that the amount of flour moved under the agreement was unduly small as compared with the proportion of exports moving as grain. Even after the large sales to China in the summer of 1934 these amounted to only 23 per cent of the total whereas the millers had asked for 50. Producers, on the other hand, were reasonably satisfied with the improvement in prices, although somewhat disappointed that it did not keep Northwest terminal markets within 9 cents of the Chicago quotation as they had hoped. Even so, they were inclined to give the agreement credit for an advance in the farm price of as much as 20 cents per bushel. Prominent members of the trade estimated the grower's net advantage at from 12 to 15 cents or more during the period of active operations. For the 1933-34 season as a whole J. S. Davis has estimated the net gain by growers to have been from 5 to 6 cents per bushel sold. Some analysts consider this too low, but even on this basis the farmers' benefit from the agreement distinct from other price influences would be somewhere in the neighborhood of 3 million dollars.

There were only one or two protests from foreign countries on the ground that the subsidy operations constituted dumping. The export association, however, made a point of making sales only on the existing world price basis, and refrained from cutting sales prices in an effort to export the maximum quantity of wheat which domestic interests desired to divert to foreign markets. As we have noted, it disposed of only about three-fourths of that amount and terminated operations with unexpended money available to the subsidy fund. In view of this attitude, assurances that the operations were of a purely emergency character, and the fact that total United States exports were kept well below the quota allotted under the international wheat agreement, complaints from abroad never reached an acute stage. Domestic interests were practically unanimous in favor of continuance or repetition of the effort if a similar emergency should present itself.

The marketing agreement has not been terminated. It continues technically in force, and during the winter of 1934-35 plans reached an advanced stage for adapting the association machinery to diverting wheat from the Pacific Northwest to feed use in the interior Northwest and to the New England states. This was to be accomplished with the aid of reduced freight rates and a subsidy paid out of processing tax revenues. Before this plan had been completed, 1935 crop prospects became so unfavorable as a result of drought that acreage restrictions for that year's crop were relaxed and the proposed movement of Northwest wheat abandoned.

Under the amendments to the Agricultural Adjustment Act approved August 24, 1935, it is provided (Section 32) that 30 per cent of gross customs receipts shall go into a fund which may be used to "encourage the exportation of agricultural commodities and products thereof by the payment of benefits in connection with the exportation thereof or of indemnities for losses incurred in connection with such exportation." If in future such funds are used to facilitate the exportation of Pacific Northwest wheat, it would seem likely that the marketing agreement would again be brought into active use. It is possible, also, that similar agreements for other regions or for other commodities might be drawn up. It is obvious that the inclusion of this provision in the amendments represents a victory for proponents of the policy of stimulating exports much after the manner of the old export debenture bill. Since the Secretary of Agriculture and the Adjustment Administration officials seem still to lean much more strongly to devices of domestic allotment and production control types, it is by no means clear that this power will be utilized to inaugurate further export operations.

CHAPTER V

THE TOBACCO AND PEANUT AGREEMENTS

For a second type of use to which the marketing agreement provision of the Adjustment Act has been put, we turn to tobacco[1] and peanuts. Agreements in this group are with one exception analogous to the wheat export agreement in that they utilized certain powers of the act to secure emergency relief in the particular situations that obtained in the summer of 1933. Another link between the matters discussed here and those in the preceding chapter is that they both represent types of action thoroughly believed in by the early administrators of the act. We have noted the importance that Mr. Peek attached to agreements for the stimulation of export movement of redundant supplies. Likewise, both he and Mr. Brand indicated a belief in the possibility of direct price-raising agreements. By approaching processors and distributors in an aggressive but friendly spirit they sought in several instances to negotiate better prices for agricultural products[2] long before such a result could be brought about through the operation of a program of production control.

In part such belief was based on the theory that there is always a greater or less margin between the maximum and minimum prices which will result from the free play of supply and demand forces. It was thought in the summer of 1933 that prices were somewhere near the bottom of this range but that vigorous action, backed by the prestige of government, could shift them up to or near the upper limit of the range. Second, there was the confidence that general economic recovery was to be brought about by the agencies of the New Deal and that agricultural prices, instead of rising slowly as laggard participants in the general upswing, could be made full sharers and perhaps pacemakers in the advance. Third, monetary inflation was generally regarded as one of the powerful weapons in the arsenal of the New Deal and it was expected to operate most directly and promptly upon export commodities. Full advantage of this force could be secured for the American producer only by the most aggressive bargaining on behalf of the whole body of producers of those commodities.

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[1] For discussion of the tobacco program as a whole, see Harold B. Rowe, *Tobacco under the AAA.*

[2] In the case of canning crops, prices were marked up without resort even to a formal marketing agreement. See p. 179.

During the time that the Adjustment Act was in process of formulation, it became reasonably clear that tobacco would be one of the small group of commodities enumerated as "basic." Hence a committee of workers in the Department of Agriculture began studying the possibility of applying the new adjustment devices to the tobacco industry. This committee presented its report on May 13, the day following the signing of the Adjustment Act. Press releases on May 17 and 18 set forth the distressed situation of tobacco producers in the face of foreign trade barriers,[3] decline in domestic consumption, abnormally large carry-overs, and prospects of heavy production in 1933.[4] The second of these statements stressed the necessity of production adjustment "for practically all types if the present accumulated stocks are to be worked down and a normal balance achieved," and added:

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[3] *USDA Press Release No. 1172-33.*

[4] *USDA Press Release No. 1176-33.*

> Under the new Adjustment Act, the Secretary of Agriculture is empowered, among other methods of procedure, to arrange for voluntary reduction of tobacco acreage or production, through rentals or direct benefit payments. The Secretary may also enter into marketing agreements with processors and others to reduce wasteful and price-depressing practices and thereby bring about better prices to the producers.
>
> The act gives the Secretary wide powers to insure the effectiveness of any agreements or any procedure that may be devised to bring a fair exchange price to the producers, manufacturers, and distributors themselves.[5]

On May 31, plans were laid for a series of conferences for the purpose of securing from representatives of producers and processors, as well as agricultural colleges, suggestions as to how the Adjustment Act could be applied in the several tobacco situations. Attention was directed first to cigar-leaf types since their situation was regarded as most critical. The evolution of plans for cigarette types, however, once undertaken, moved more swiftly to the stage where a marketing agreement was put in effect. Since the agreement for flue-cured tobacco was signed first, was of a much more simple type than that for cigar-wrapper tobacco, and was typical of six of the seven agreements used for this commodity, we shall take it up first in our discussion. A few words of history are necessary if we are to see clearly the relation of the marketing agreement to other aspects of the tobacco program.

THE FLUE-CURED TOBACCO AGREEMENT

It was about the middle of July before the AAA turned its attention to the cigarette types of tobacco. An informal conference with reference to the general plans for flue-cured and burley was held on July 27, at which the representatives of the important manufacturing companies were asked to propose some plan by which current prices could be raised. While the manufacturers' representatives expressed a courteous desire to co-operate in such a move, the conference was barren of any helpful suggestions for immediate action.[6] As to any price raising on their part, they manifested concern lest it should lead to over-production in subsequent years. The Adjustment Administration on its part did not consider the situation so pressing as to require an effort to reduce 1933 production through a plow-up campaign, although it did consider "the possibility of keeping the surplus off the market through trade agreements or of paying growers to divert it to non-commercial uses." [7]

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[5] The same, p. 3.

A second conference of flue-cured tobacco interests was held on August 30 but was without results so far as any positive proposals from processors and trade groups were concerned. Meanwhile, the prices prevailing in the auction markets had fallen disastrously since the markets opened.[8] Expressions of dissatisfaction had spread rapidly from Georgia into the Carolinas. Protest meetings were held, violence was threatened, and the situation became so menacing that the Governors of North Carolina and South Carolina ordered the closing of the markets in those states effective September 2.

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[6] On the morning of the conference the manufacturers filed a code of fair competition covering wage and labor questions and provisions relating to prices of the product. As none of these matters were regarded as offering advantages to producers, the AAA did not even call a hearing on the proposed code.

[7] J. B. Hutson, "The Application of the Agricultural Adjustment Act to Tobacco," *American Co-operation, 1933,* p. 483 (address delivered at the American Institute of Co-operation, July 28, 1933). At this same meeting Chester Davis said: "The Agricultural Adjustment Act aims at the control of prices through the control of production. It has nothing to do with market prices directly." Marketing agreements being undertaken in the dairy and horticultural fields were referred to as important primarily as agencies for the regulation of production (see p. 47). Apparently the idea that marketing agreements might be used purely for the purpose of direct price bargaining without any modification of the supply situation occupied a very subordinate place in his thinking at this time. It was much more definitely a part of the philosophy of Administrators Peek and Brand (see pp. 38, 169, 179). As occasion arose, however, Davis showed a willingness to accept experiments along this line for what they might prove to be worth.

The view was being freely expressed in the producing territory that such conditions should not be tolerated now that the Agricultural Adjustment Act had been passed for the express purpose of relieving the distress of agriculture. Even though it was known that the AAA was at work on the formulation of plans for production adjustment for subsequent years,[9] producers demanded that steps be promptly taken for emergency relief for the crop of 1933. Prices in the auction markets declined during the latter part of August until they were around the 1932 level, and observers were predicting that the average for the season might be as low as 10 cents a pound and certainly not over 12 cents.[10]

In this situation the Secretary on September 1 announced a processing tax on flue-cured tobacco to become effective on October 1. On September 15 the flue-cured tobacco interests were called into another conference preliminary to a formal hearing on September 21 on a draft proposal for a marketing agreement designed to bring prices nearly

[8] On August 1 in Georgia and August 10 in South Carolina. The latter date was advanced at the direction of the AAA from the 15th as originally set by the Tobacco Association of the United States. The reason for the change was that tobacco was beginning to suffer deterioration through lack of proper storage facilities on the farm.

[9] On August 15 a growers' committee from Virginia, North and South Carolina, and Georgia had recommended to the AAA that it initiate a production control program for flue-cured tobacco. *AAA Press Release No. 347-34.*

[10] *Agricultural Adjustment,* AAA, p. 79.

to the parity level at once. It was argued that the assurance of production control in 1934 and 1935 under the processing tax and growers' contract plan announced on September 1 (now made reasonably certain by the preliminary sign-up) would make such a step entirely feasible so far as manufacturers or exporters of this type of tobacco were concerned. This course marked a departure in procedure, since the AAA instead of waiting for a proposal from trade interests (which, though invited, had not been forthcoming) took the initiative itself in preparing a proposal for an agreement.[11]

The essence of the proposal was that all contracting buyers were to undertake to pay for the whole of the 1933 crop such prices as would approximate parity. An executive committee was to name each week the average price to be paid by buyers, these weekly averages being so computed as to attain the stipulated yearly average by the end of the marketing season. The agreement was not to be limited to the current marketing year but was to continue unless terminated by the Secretary or expiring as a result of a declaration by the President that the agricultural emergency had been ended. In subsequent years the season's average price was to be "agreed upon between the executive committee and the Secretary."

The proposed agreement also contained a provision that:

> The prices at which the contracting buyers or their subsidiaries or affiliates sell the products manufactured by them in whole or in part from flue-cured tobacco shall not be increased during the time of this agreement over those prevailing on September 15, 1933, unless the approval of the executive committee and of the Secretary is given.

[11] *AAA Press Release No. 633-34.*

Contracting buyers were obligated by its terms to "maintain systems of accounting which shall accurately reflect a true account and condition of their respective businesses," to make their books and records available for examination by representatives of the Secretary of Agriculture, and to furnish information to the Secretary in accordance with forms to be supplied by him, such reports to be verified under oath. Signing of the agreement would constitute application for and consent to licensing.

The stipulation as to books and records met with extreme disfavor on the part of the buyers, and they pointed out furthermore that the agreement would prove ineffective because it failed to make provision for the purchase of any definite quantity of tobacco under the schedule of prices indicated. The manufacturers insisted, however, that to require the price of manufactured products to be kept down to the September 1933 level and that books and records be opened to the Secretary constituted government control of the tobacco manufacturing industry, which they could not accept. They stated that they would not sign any marketing agreement which failed to include a provision guaranteeing them independence in operating their business.

Though rejecting the Adjustment Administration's proposed agreement, the manufacturers suggested as a counter-proposal that they undertake to buy at least as much flue-cured tobacco as they had manufactured in the preceding year and to pay for it an average price of at least 17 cents per pound.

They also inserted a strong statement as to freedom of operation, as follows:

> This proposal is possible only on the basis—a condition of its acceptance and of the continuance of the obligation thereof—that

> in so far as the Agricultural Adjustment Administration has jurisdiction in the premises, the undersigned companies are to manage, conduct, and operate their respective businesses with freedom of business policy as heretofore, it being understood that no provision herein made in any way limits or restricts the authority of the Agricultural Adjustment Administration in the matter of the levying of processing taxes or prevents the negotiation and making of marketing agreements, not inconsistent with this paragraph, with respect to any other type of tobacco than that included herein.[12]

The AAA on its part, though willing to accept the price and quantity proposal, was not willing to accept it as part of a marketing agreement which contained the stipulation as to freedom "to manage, conduct, and operate their respective businesses with freedom of business policy as heretofore," on which the manufacturers insisted. After lengthy negotiations the matter therefore came to a deadlock, and the Adjustment Administration abandoned the effort to secure a marketing agreement and made preparation for bringing all buyers of flue-cured tobacco under a license requiring them to pay not less than the specified minimum price although with rebates to exporters which would safeguard them against the disruption of their business.

Confronted by this situation, the manufacturers' representatives re-opened negotiations and finally accepted an agreement providing for both a minimum average price of 17 cents per pound and a quantity of purchases at least equal to that of the previous season. They withdrew their insistence on the provision limiting the regulatory power of the Administration and agreed "if and as required by the Secretary" to report under oath their usings of tobacco, quantities purchased, and prices paid, and to make available such books and records as were needed to verify these reports.

[12] *Agricultural Adjustment,* AAA, p. 80.

The controversial question of product prices was met by a compromise which provided that:

> During the period of this agreement the contracting buyers will use all reasonable effort to protect the consumers of their products against profiteering and agree that the price of any merchandise sold by them after the date hereof shall not be increased over the price on January 3, 1933, by more than is made necessary by actual increase in production, replacement, and invoice costs of merchandise, or by taxes or other costs resulting from action taken pursuant to the act, since July 1, 1933, and in setting such price increases, to give full weight to probable increases in sales volume.[13]

This January 3 price for cigarettes was 68 cents per thousand less than the price of the preceding summer but 50 cents more than the price which obtained throughout the remaining weeks of the agreement period.

The agreement was specifically stated to be "a limited marketing agreement, the sole purpose of which is to establish the minimum quantity of and price to govern purchase of flue-cured tobacco by the contracting buyers for the 1933 marketing season from September 25, 1933 to March 31, 1934 inclusive"—not, like the first proposal, one which would continue from year to year.

While this agreement was acceptable to the Tobacco Section, the compromise on books and records was not very palatable to the Secretary of Agriculture. Still the alternative of a license carried a strong probability that the government would have to engage in purchasing and holding operations on its own account. Hence, the Secretary on October 12, 1933 signed the agreement but wrote in following the word *approved:* "It being of course obvious that no officer of the government can by agreement limit or curtail any authority vested in him by law, nothing contained herein shall be construed by the parties to this agreement as attempting to limit or curtail such legal authority."

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[13] The same, p. 82.

Although signed on October 12, the effective date of this agreement was September 25, which meant that all tobacco purchased on and after that date could count as part of the stipulated quantity and that the prices paid for it would be included in calculations of the average price. Since approximately 75 million pounds of flue-cured tobacco had been purchased prior to that date, the effect of the agreement was to provide for the absorption by the buyers of a substantially larger quantity than they had purchased in 1933. The contract further bound the contracting buyer to "purchase in the usual and ordinary manner . . . and not buy unduly of the high grades in order to defeat the purpose of this agreement or concentrate its purchases in any geographical region" and not to raise prices above those of January 3, 1933 except as necessitated by actual increases in costs of production "or by taxes or other costs resulting from action taken pursuant to the Agricultural Adjustment Act."

The exporters did not become signers of this agreement since they argued that any such action on their part would be viewed with disfavor by foreign purchasers, many of whom were government monopolies. They undertook, however, to make their prices and volume of purchases conform to the terms of the marketing agreement.

In working out the flue-cured tobacco agreement major issues had been threshed out and a precedent established for using a type of "limited" price-and-quantity bargain to anticipate for growers the benefits which in subsequent seasons seemed assured under production control plans. The Adjustment Administration proceeded to follow the general pattern of the flue-cured agreement in five other cases. In general they may be classified as to types of tobacco involved, but there was also a differentiation according to the trade groups concerned—cigarette manufacturers, manufacturers of tobaccos for both smoking and chewing, snuff manufacturers, and by-product companies. The assent of the major buyers usually resulted in these agreements being virtually effective some time in advance of the date at which last details could be worked out and the signatures of the remaining buyers secured. After being approved by the Secretary, however, the quantity and price provisions were made to apply so far as possible to the whole of the marketing season. The types of tobacco covered and these disparities in dates are shown in the accompanying tabulation.

TOBACCO AGREEMENTS SIMILAR TO THE FLUE-CURED AGREEMENT

Type	Approved	Effective	Terminated
Burley[a]	Jan. 6, 1934	Dec. 11, 1933	Apr. 15, 1934[b]
Fire-cured and dark air-cured, types 21, 22, 23, 24, 35, and 36[c]	Mar. 1, 1934	Dec. 1, 1933	July 15, 1934[b]
Dark air-cured, types 35, 36, and 37	Mar. 1, 1934	Dec. 1, 1933	July 15, 1934[b]
Fire-cured and dark air-cured, types 21, 22, 23, 24, and 36[c]	Mar. 26, 1934	Mar. 26, 1934	July 15, 1934[b]
Stemming grades of cigar-leaf, types 41, 42, 43, 44, 51, 52, 53, 54, and 55.	June 9, 1934	Dec. 1, 1933	June 30, 1934[b]

[a] In this agreement concessions were made to two of the contracting buyers with reference to quantity of tobacco to be purchased and to one of them in the matter of the average price to be maintained. Also, all quantity agreements were to be lowered in the event that the crop fell below the then estimated amount of 400 million pounds.

[b] Except as to certain provisions covering final reports and adjustments.

[c] The first of these agreements was with snuff manufacturers and the second with by-product companies.

The marketing agreement for fire-cured and dark air-cured tobacco, types 21, 22, 23, 24, and 36, differed somewhat from the others in its provisions governing quantity of tobacco to be purchased. This agreement provided that all tobacco remaining on the market unsold at the close of each marketing day should be taken by the signatory companies at a rate one-fifth to one-quarter cent less per pound than the rate stipulated in the agreement.

The nature of these agreements obviated the necessity for administrative machinery in the field, such as the executive committee provided in the agreement proposed for flue-cured tobacco or the control committees or like bodies provided in all of the agreements which we shall have occasion to discuss in subsequent chapters. All that was required was a check by Adjustment Administration officials in Washington to see that the necessary reports as to quantities and prices were submitted and to satisfy themselves as to the correctness of these reports and of the payments made by individual buyers to make up any deficiency in prices paid or quantities purchased. No difficulties were encountered in this connection and the agreements were regarded as having accomplished their stated purpose. When the stipulated quantity was taken at the agreed price they in effect brought into force for the 1933 crop the price situation which would be expected to obtain once the production controls became operative.

The manufacturers were not averse to this agreement once they were assured that the supply situation in subsequent years would be under control. But when the matter of renewing the marketing agreement in 1934 came up, they would have none of it. They evidently desired to regain their freedom from any government constraint and argued that production control promised to give the producer parity prices or better. Even should extraordinary developments cause prices to fall below parity, the AAA could collect processing taxes equal to the difference. This fund, less a very small deduction for expenses, would be distributed to growers. These "limited" price-and-quantity agreements have therefore not been repeated.

THE MARKETING AGREEMENT FOR PEANUT MILLERS

Unlike tobacco, peanuts had not been included as one of the seven basic commodities which could be dealt with through processing taxes and rental or benefit payments under the provisions of the act of May 12, 1933. Hence, any action designed to assist this commodity in 1933 had to be taken under the marketing agreement provision. The first attempt was similar to that of the tobacco agreements in that it was planned to raise prices quickly by a collective bargain with processors negotiated on behalf of producers by the government. There were, however, substantial differences between the peanut agreement and the tobacco agreements as finally negotiated. These will appear as we proceed with our account of the peanut marketing agreement.

Prior to the general price decline of 1920 peanut prices at the farm had risen to more than 9 cents per pound.[14] During the 20's they averaged about 5 cents until 1929, when they were caught in a decline which carried them down year after year until 1932 recorded the disastrously low figure of 1.2 cents on December 15.[15] Prospects in 1933 were for a crop of moderate size, and prices rose to 2.6 cents in August. During September, however, there was steady and severe decline,[16] and urgent requests were forthcoming from the Virginia Co-operative Peanut Growers' Association and from North Carolina interests, headed by the Governor of the state, urging the AAA to take steps designed to support the price of the current crop. The Administration felt that nothing adequate or lasting could be accomplished without a production control program. Pending such developments, however, it undertook to use its good offices to secure emergency relief.

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[14] Weighted average price to producers November 15. *Yearbook of Agriculture*, 1934, Table 300, p. 574.

[15] The same, Table 301, p. 574.

[16] *AAA Press Release No. 681-34.*

On October 2 Administrator Peek addressed an open letter to shellers and cleaners of peanuts, stating that the Agricultural Adjustment Administration "is determined to take some action [in] an emergency situation." He asked the full co-operation of peanut shellers and cleaners in an emergency program consisting of two parts:

> 1. To put into effect immediately a price to the farmer of at least $60 per ton on No. 1 Farmers' Stock Spanish peanuts,[17] $55 per ton on No. 1 Farmers' Stock Runners, and comparable prices for other varieties and grades.
> 2. The preparation and submission to the Agricultural Adjustment Administration at the earliest practicable date of a formal marketing agreement covering the marketing of peanuts from all producing areas, designed to control the movement to market and insure more satisfactory prices to growers.

He added that the AAA was endeavoring to expedite consideration of a code of fair competition for the raw peanut milling industry which was designed to regulate the competitive situation. The prices suggested would not accomplish the full purpose of the Adjustment Act in securing parity but they would represent a very substantial advance above the scale of prices then prevailing. The Adjustment Administration recognized that "any permanent improvement in the peanut industry must take into account the problem of limiting production to marketing demand" and was therefore already at work, in co-operation with the growers, exploring possibilities of a plan of production control in 1934 if legislation could be secured. It was on this fact and on the increased purchasing power of the people being brought about, he felt, through a "blanket code" covering wages and hours of labor that he based his request for co-operation of processors in the temporary program of immediate price raising.

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[17] Then selling at about $40 per ton.

Shellers and cleaners of peanuts responded to this request and advanced their buying prices in conformity with the Administrator's request. They also joined with co-operative associations and specialists of the AAA in preparing proposals for a formal marketing agreement. These were submitted on October 27, 1933 and came to public hearing on December 2. Besides discussion of the time during which minimum prices would be maintained and of various operating details, there was a strong effort made to advance the scale of prices by $5.00 per ton above the prices already agreed upon with the Administrator. This change was eventually accepted, and the agreement was given tentative approval by the Secretary and sent back to the producing territory for signature by the processors. A majority of the processors had participated in the formulation of the agreement and about 80 per cent of the milling interests signed it voluntarily. It included the standard request for licensing and, in order to make its terms binding on all, the Secretary issued the license on the same day that he signed the agreement—January 23, 1934. Both agreement and license became effective on January 27.

Unlike the six "limited" tobacco agreements, the marketing agreement for peanut millers was not restricted to the single season in which it became effective but was so drawn as to continue until terminated by the Secretary or by the expiration of the act. A control board was authorized to establish each year (by vote of not less than seven of its ten members) a schedule of minimum prices for the different varieties and grades. Initial prices were stated in the contract for the five grades. These ranged from $55 to $65 a ton and were to remain in effect until changed by action of the control board with the approval of the Secretary. Other features of the agreement covered the use of United States standard grades, making books and records accessible to representatives of the Secretary and submitting reports to the control board, observance of uniform sales terms and trade practices, and standardization of storage charges.[18] Five members of the control board were to be elected by the processors and five by the growers.[19]

This marketing agreement also contained a provision (Article VI, Section 2-e) that the control board on its own initiative or in co-operation with the Secretary should make an investigation of the problem of controlling the production of peanuts in 1934 or of controlling the supply to be marketed from the 1934 crop. Results of this investigation, together with recommendations of the control board, were to be reported in writing to the Secretary on or before February 1, 1934.

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[18] A code of fair competition for the raw peanut milling industry was approved on Jan. 12, 1934 under the NRA. This had first been submitted to the AAA but was transferred to NRA by the President's order of Jan. 8, 1934. Besides matters dealing with hours, wages, and labor conditions, this code also covered unfair methods of competition.

[19] These grower representatives were to be nominated by the Secretary in 1934 for the purpose of facilitating prompt organization of the first board.

Under the voluntary response of processors to Administrator Peek's request in October, and subsequently under the agreement and license of January, processors maintained peanut prices at the stipulated level. Nothing in the agreement, however, bound them to purchase any fixed quantity of the product, and by the summer of 1934 growers in some sections[20] began to find themselves left with considerable quantities of peanuts for which they could not find a buyer or which they could market at the contract price only by paying a storage charge so excessive as to constitute a scaling of the price. In this situation farmers turned to "contract shelling." That is, they took their peanuts to the mill to be shelled and prepared for market on a service-charge basis, there being no resale price provisions in the agreement or license. The producer then sold his product direct to candy manufacturers and others at such prices as it would bring. This competition brought the price of the finished product to a level where millers could not recoup their costs on peanuts bought in the shell from growers at the price stipulated in the agreement.[21] This brought buying to a complete stop and in the face of prospects for a very large new crop made it evident that nothing further could be accomplished under a marketing agreement which merely established minimum prices and provided no means for handling the surplus.

Even before this time, proposals for the amendment of the agreement had been under way. In order to understand these developments, we must retrace our steps to February 1934. In accordance with the section of the agreement which instructed the control board to investigate possibilities in the direction of production control, a report had been submitted to the Secretary on February 9, recommending that peanuts be made a basic commodity under the Agricultural Adjustment Act and that a production control program be initiated as soon as this result could be brought about.[22] These recommendations included the making of allotments to growers covering the acreage of peanuts which they would be permitted to market for cleaning and shelling, all peanuts produced in excess of this amount to go to by-product uses.[23] Possibilities in this direction were carefully considered by the AAA and in the amendments to the Adjustment Act, passed on April 7, 1934, peanuts were added to the list of basic crops, so as to permit the levying of a processing tax.

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[20] Chiefly in the Southeast, to a much less extent in the Southwest, and not at all in the Virginia area.

[21] To some extent the ability of millers to pay the agreed prices and still dispose of the product at a profit appears to have depended on the fact that they had bought considerable quantities of peanuts before the agreement prices became effective and averaged their lower priced raw material with later purchases. By late summer it became evident that the 1934 crop would be very large and thus the problem of maintaining prices became increasingly difficult.

In March the AAA brought forward a plan (subject to the passing of the amendment making peanuts a basic commodity) for setting a limit on the quantity of peanuts that could be purchased for cleaning and shelling. This amount would be allotted to districts and to individual growers, and any excess could be marketed only to oil mills or other low-priced outlets. Such a diversion plan was at this time facilitated by reason of the fact that the reduction in the cotton crop had so curtailed the supply of cottonseed oil as to make a relatively more favorable market situation for peanut oil, and the drought had created a strong demand for all kinds of stock feed.

A public hearing on this proposal was held on July 14.

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[22] *AAA Press Release No. 1822-34.*

[23] *AAA Press Release No. 2173-34.*

Considerable opposition to amending the marketing agreement in this manner developed on the part of millers both at this hearing and at additional hearings which were held in Virginia, Georgia, and Texas later in the month. Prices had risen while the marketing agreement was in force from 1.6 cents per pound to 2.9 cents according to AAA figures,[24] but this was still far below the parity price of 5.6 cents, and it was doubtful if even such a level could be maintained when the heavy new crop began to move. Since the millers were unwilling to accept the AAA's proposal for adding a surplus disposal arrangement to the marketing agreement, it was felt that a satisfactory condition could not be brought about except by the inauguration of a production control program. Accordingly, it was announced on August 23 that such a program would shortly be inaugurated, and a public hearing was called for August 31 to consider the amount of the processing tax and details of the control program.

On August 30 millers and shellers of peanuts after conference in Washington notified the Adjustment Administration that they did not desire to enter into a further marketing agreement. It was argued by the AAA that the marketing agreement would operate to the benefit of millers and users of the product since it would permit the levying of a smaller processing tax than would otherwise be necessary. A large number of processors, however, petitioned for the cancellation of the marketing agreement, and it was accordingly terminated by the Secretary's order on September 29. On October 1 a processing tax of one cent per pound was put into effect. This tax was to provide funds for the making of "diversion" payments on peanuts (up to 20 per cent of the crop) diverted to oil mills for crushing or baled by the grower for feed uses. In addition to this, it was to provide benefit payments to growers who would enter into a contract to reduce their 1935 acreage.

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[24] *AAA Press Release No. 440-35.*

Thus the peanut marketing agreement, like the limited tobacco agreement, served as an emergency measure for direct price enhancement pending the development of a production control program or, as it finally worked out, a surplus diversion and production control plan. It had been drawn in the standard form providing for continuation beyond the one year but with the expectation that it would be so amended as to provide a means of surplus control. Since the millers were unwilling to accept these proposals as part of the marketing agreement, it was terminated after eight months of operation. Owing to the lateness of the date at which it became operative and the lesser degree of solidarity among the buyers' group, it was less effective in its operation than the tobacco agreements.

THE CONNECTICUT VALLEY SHADE-GROWN TOBACCO AGREEMENT

Returning now to the question of cigar types of tobacco (see page 78), we find a marketing agreement considerably different from the simple price-quantity agreements which we have been discussing with reference to peanuts and to the other types of tobacco. For the filler and binder types production control plans were worked out during the summer of 1933. With reference to the cigar-wrapper types, however, the comparatively small amount of money which would be made available through processing taxes and the high value per acre of this crop made the processing tax approach more difficult. It was eventually worked out for the Georgia-Florida shade-grown area, but the

Connecticut Valley shade growers elected to use the marketing agreement. This tobacco is produced by a very small number of growers, some of whom operate under contract with the handlers but many of whom are themselves handlers of the product. Over 90 per cent of the handlers became signers of the agreement, and it became effective on December 11, 1933. The one handler remaining outside the agreement was brought under its terms by license, effective January 17, 1934. Subsequently he signed the agreement, as did also two new handlers.

The basic feature of this agreement is that it provides for a schedule of minimum prices at which each grade of wrapper tobacco may be purchased from the grower. Actually only schedules for sales by handlers have been set up, as such prices represent direct returns to growers and cover the first sale of nearly all the crop. In order to support this price structure an allotment is made to each grower of the acreage which he is permitted to produce. An acreage committee, after study of the condition of the industry, makes this information available to the Secretary of Agriculture, who before February 2 of each year determines the total acreage which it is deemed advisable to produce. This total acreage is allotted by the committee to the individual growers on the basis of their previous production, subject to approval of the Secretary. As a means of making this production control effective, the agreement provides that no handler may purchase any tobacco not covered by a production allotment made to some grower.[25] The share which each handler may have in the total is allotted to him in the form of a "base handling acreage" by the control committee—in part, on the basis of the acreage which he handled in the calendar years 1930-33 but with such adjustments as the committee deems necessary, subject to the approval of the Secretary.

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[25] Likewise he may not handle the tobacco of any grower who has increased his production of any agricultural product covered by another production control plan.

The Connecticut Valley agreement also provides for establishing a schedule of minimum prices for tobacco sold by contracting handlers to the trade. These schedules are fixed by the control committee but are subject to the prior approval of the Secretary. The use of United States standard grades, when adopted by the Bureau of Agricultural Economics, was to be binding on the handlers. This step was taken by the Bureau in time to be effective for the 1933 crop. The terms of inspection, method of packing, and sampling, sales terms, and brokerage charges are also provided in the agreement.

Unlike the six price-and-quantity agreements discussed in the first section of this chapter, the Connecticut Valley shade-grown agreement is not limited to a single season but continues in effect as long as the Adjustment Act is in force unless terminated by the Secretary on his own motion or at the request of 75 per cent of the contracting handlers. It is now in its second season of operation, has encountered no serious difficulties in enforcement, and is regarded as a valuable stabilizing force in this industry.

CHAPTER VI

RICE MARKETING AGREEMENTS

The marketing agreements for rice were similar in general scope and character to that for Connecticut Valley wrapper tobacco, and thus illustrate a third type of experimental use to which the marketing agreement provisions of the Adjustment Act were put during the early days of the market adjustment program. In this third type of use, the marketing agreement embodies a production control plan. Owing to the peculiar conditions obtaining in the shade-grown tobacco industry, acreage control was effected under a mere allotment system without benefit payments. In the rice industry, however, benefit payments were made in a manner essentially similar to that used under Section 8 (1) of the act but from funds secured by withholding part of the purchase price rather than through the imposition of a processing tax.

Rice, like tobacco, was one of the basic commodities enumerated in the Adjustment Act as originally passed, and thus from the start eligible to the processing tax and production control provisions of the law. The marketing agreement method was chosen as the sole means of dealing with the commodity, partly because of difficulties in using the processing tax device and partly because of rather unusually favorable conditions which were presented in California for trying out the marketing agreement approach. The failure which resulted from the attempt to use an adapted form of the California plan in the Southern rice area soon showed the limitations of the method.

The processing tax difficulty arose from the fact that rice prices had been rising toward parity during the summer of 1933 as a result of the short-crop prospect, together with the speculative enthusiasm which had been engendered by the inclusion of rice in the act as a basic commodity. This price situation meant that if a processing tax were named it would have to be small in amount, whereas conditions pointed to the possibility of a large crop in 1934, necessitating heavy benefit payments.

Against this difficulty which would confront an effort to use the processing tax, the general situation in the industry was such as to facilitate the employment of the marketing agreement. The rice industry is geographically compact (in two areas) and the number of processors small and, like the growers, well localized. Co-operative organization among rice producers had been rather extensively developed in California and to some extent in the South, and both co-operatives and processors were favorably disposed toward the idea of a marketing agreement. Furthermore, co-operatives and rice millers of the Pacific Coast area had in previous years joined in a price-stabilizing export plan which they had operated with a considerable degree of success.[1] At the time the AAA was getting into operation, they were just completing a similar joint undertaking with reference to the crop of 1932. These experiences furnished something of a pattern for the marketing agreement under the AAA, as well as contributing to the sense of confidence that such an agreement might prove workable. With the processing tax method not practically available, officials of the Adjustment Administration welcomed the opportunity to develop the marketing agreement under such favorable conditions. Some, at least, of those who worked on the plan during the summer of 1933 thought of it as a sort of laboratory test of the efficacy of the marketing agreement provision as a major adjustment device, including control of production.

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[1] E. L. Adams, "Marketing California's Surplus Rice Crop," *American Co-operation,* 1927, Vol. 1, pp. 446–58; and also "Experience with Surplus Disposal and Control Plans," the same, 1928, Vol. 2, pp. 395–403.

SITUATION OF THE INDUSTRY AND OBJECTIVES OF THE PLAN

Rice production in the United States is limited to two relatively restricted areas—one in southern Louisiana, east central Arkansas, and southeastern Texas, and the other in the Sacramento and San Joaquin valleys of California. Increase of acreage was strongly stimulated in the period from 1917 to 1920, in which year it stood at 1.3 million acres. The following year it dropped to 1 million but was still at practically that same point in 1931. The United States was on an import basis until 1918, since when we have had net exports in every year except 1925. There is a considerable movement from the continent to Hawaii and Puerto Rico, within our tariff boundaries. Acre yields have shown a considerable tendency to increase, whereas demand has been falling off in the most desirable import markets of Europe. This has been due not only to the low purchasing power and the competition of Oriental rice, but also to the hampering of foreign trade by import tariffs in several of the consuming countries, by export bounties (such as that in Italy), and by the Rice Control Act in Japan. Domestic demand also was adversely affected after 1929 by the general depression in this country.

The December 1 farm price of rice fell from an average of $1.16 in the seven-year period 1919-26 and $0.78 in 1930 to $0.42 in 1932, and the carry-over had risen from a normal of about 100 million pounds to 220 million in 1932.

Growers had reduced acreage in that year by 10 per cent as compared with 1931, and there was a slightly greater rate of decline in 1933 planting. Even so, the size of the carry-over and the continuance of depressed demand in both domestic and foreign markets left the industry in a very unsatisfactory position. In view of the acreage reduction already effected, it appeared that the immediate problem was one of providing some means for liquidating the abnormal carry-over on as favorable terms as possible, meanwhile making sure that acreage should not again increase greatly.

On the price side, it was desired that prices be brought immediately to—or as far as possible toward—a parity basis. In terms of market conditions, it was desired to eradicate certain long-standing trade practices on the part of some rice millers, which were regarded as harmful to the producer.

With these several objectives in mind, rice interests began to move toward the setting up of a marketing agreement almost immediately after the passage of the act. Separate agreements were drawn for the two producing territories. While they differed in detail, they were harmonious in purpose, provided for co-ordination committees, and together constituted essentially a national plan for the industry. In the Southern region, but not in California (where the small number of handlers all became signers of the agreement), the license was issued to accompany the agreement and a code of fair competition was also adopted.

THE CALIFORNIA AGREEMENT

Representatives of California rice growers and millers began informal discussion of an adjustment plan with the Administration in May 1933, and by June 5 were ready to submit their proposals in a second conference, in which they were joined by the Southern group. These proposals called for "trade agreements with eventual measures of acreage control."[2] At a formal hearing in Washington on August 29, a marketing agreement proposal was submitted on behalf of the Rice Growers' Association of California, the Independent Rice Growers' Committee, and the eight milling firms which constitute the whole of the California rice-milling business. Since this proposed agreement had been worked out by the producer and processor agencies at home and they had arrived at essential agreement before coming to Washington, no opposition developed in the hearing except that the independent growers protested at the rate of the milling charge. This was promptly reduced in accordance with their views and, on September 26, 1933, Secretary Wallace signed the completed agreement, which became effective on that day. All the California rice millers signed the agreement, as did also the Rice Growers' Association and the Independent Rice Growers' Committee, together representing all but a small fraction of the acreage. This remaining acreage was represented by the Paddy Rice Growers of California, a nominal organization of non-conformists which was allotted one member on the "crop board," although it did not become a signatory.

The California rice marketing agreement set up two administrative committees known as the marketing board and the crop board. The former was composed of one representative for each miller and a neutral non-voting chairman selected by these members. This board was charged with the duty of supervising the performance of the marketing agreement and of acting as intermediary between the parties to the agreement and the Secretary of Agriculture, and "in general shall be the means by which policies, prices, terms of sales including uniform brokerages, other allowances, etc. are determined from time to time." The vote of each member was weighted according to the volume of milling normally done by the organization which he represented.

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[2] *AAA Press Release No. 1282–33.*

The crop board was responsible for making acreage allotments and was composed of eight members, two selected by the Rice Growers' Association, two by the Independent Rice Growers Committee, one by the Paddy Rice Growers of California, one chosen by the co-operative from two persons nominated by the independent growers, and one chosen by the independents from two nominees of the co-operative. Both of these latter members were required to be growers but not connected with either the co-operative or the independent growers' association. The chairman of the marketing board served as the eighth member of the crop board.

The price system set up under this marketing agreement consisted of three parts. First was the "Secretary's price" for clean rice established when the agreement became effective and subject to change from time to time at his discretion, on his own initiative, or in response to recommendation of the marketing board, with the concurrence of an alternative proposal from the crop board. Second came "base prices" determined by a 60 per cent affirmative vote of the marketing board but limited to a range not exceeding 5 per cent above or below the "Secretary's price." Third were "producers' prices" for paddy, to be computed by the marketing board from the "base price" for clean rice, this computation to be in accordance with a schedule of differentials attached to the marketing agreement. Besides a "fair milling charge" of 30 cents per 100 pounds of paddy, these covered transportation costs, "bag allowance," handling and appraisal charges, brokerage of 8 cents per 100 pounds of milled product, and 1 per cent discount for cash.

The marketing board was authorized, with the approval of the Secretary and the concurrence of the crop board, to levy a marketing assessment in such amount as it deemed necessary in order "to promote the sale of a portion of the available supplies at any given time into non-routine markets." Such sales were exempt from the provisions covering trade prices, and "the supply of rice to complete such sales shall be prorated among the millers on the basis of normal volume percentages[3] to the extent the prospective millers desire such business."

The agreement also provided for a "millers' trust fund" to which the millers paid each month the amount of 10 cents for each bag of paddy processed during the preceding month. If any miller exceeded his quota during this time, he was required to pay an additional 10 cents for each bag of such excess, and if such payments were not made by the sixteenth of the month following the processing operation, an additional charge of 5 cents per bag was made on all paddy processed during the preceding month. At the end of the year, this millers' trust fund, less any necessary expenses, was returned to the respective millers according to their several "normal volume percentages, except that a miller who has exceeded his quota for the preceding 12 months shall receive only one-half of the normal volume percentage for the amount contributed by him for such excess."

Furthermore, if the marketing board after proper investigation determined that a miller had failed to abide by the agreement "or any sales terms, rules, regulations, or policies prescribed by the marketing board pursuant thereto," it deducted from such miller's share in the millers' trust fund a sum not exceeding four times the profit realized from such transactions as estimated by the marketing board, such damages in no event to be less than $500. Sums so deducted were distributed to the other millers in proportion to their respective normal volume percentages.[4] As a further means of effecting the enforcement of the contract, it was provided that each miller should maintain a proper system of accounts and keep his books and records subject to the examination of the Secretary of Agriculture "in the furtherance of his duties with respect to the agreement."

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[3] As provided in Schedule A attached to the marketing agreement. These ranged from a minimum of 1.5 per cent to a maximum of 37.5 per cent of the total business.

The second principal feature of the California rice marketing agreement was a production control plan to be put in operation by the crop control board if production promised to exceed 3 million bags. This control plan allowed each grower an allotment based on his production of rice during the previous five years, the total, however, not to exceed 3 million bags by more than 10 per cent. To institute a production control program, the crop board began by requiring that each producer who desired to participate file a written statement of intentions to plant during the ensuing season. In case these statements indicated a production in excess of 3 million bags, a control pro-

[4] When the marketing agreement was first under consideration, the California rice millers also drew up a code of fair competition which was submitted to the AAA. In view, however, of the return of agricultural industry codes to the NRA by Executive Order of Jan. 8, 1934, and the inclusion of trade practice provisions in the marketing agreement, the matter of a separate code was dropped. The millers continued to operate, so far as labor and wage provisions were concerned, under the President's Re-employment Agreement, the "blanket code."

gram was at once declared to be operative. If the total showed less than 3 million bags, the board, as soon as possible after June 1, had a field survey made of land actually planted. "If the average production of land so found to be planted and under cultivation in the estimation of the crop board exceeds 3 million bags, then the crop board, with the approval of the Secretary, shall immediately declare a crop control program to be operative for such crop with producers participating on the basis and to the extent of the statements of intentions to plant or not to plant filed before the date previously set by the crop board." (Article IX, Section 2.)

The crop board then assigned each grower a quota in accordance with his preceding five-year production record. Compliance with this quota could be checked by reason of the fact that there was no market for paddy rice except at one of the seven mills which operated under the marketing agreement. Any producer "bringing to harvest acreage in conflict with his statement" could not participate in the crop control program. In order to make this crop control program effective, the grower on delivery of rough rice to the mill for cleaning was paid only 60 per cent of the prevailing scale of growers' prices.[5] The remaining 40 per cent of the purchase price was paid into a growers' trust fund. Upon furnishing evidence satisfactory to the crop committee that he had complied with the terms of the acreage control plan, the grower received as final settlement for his paddy his pro-rata share in the growers' trust fund. Any grower who had not indicated his desire to participate in the control program by filing a written production record and statement of intentions to plant received only the initial payment of 60 per cent of the scheduled price and did not participate in the trust fund. Disbursements from this fund were made on January 1, March 1, and July 1 following the harvesting of a given crop.

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[5] Seventy per cent in the original agreement but changed by amendment of Mar. 2, 1934 to 60 per cent, the rate employed in the Southern rice marketing agreement.

Inasmuch as all the millers in the California area signed the marketing agreement, no license was issued at that time. Subsequent developments which we shall discuss later in the chapter, however, caused a license to be issued on December 21, 1934.

THE SOUTHERN AGREEMENT, LICENSE, AND CODE

The evolution of the rice marketing agreement in the Southern territory differed considerably from that of the California agreement. No such unity of action or solidarity of interests had previously been developed between millers and growers of that section. The first effort, therefore, was toward getting an agreement which would assure a remunerative price to growers and the regulation of charges and trade practices on the part of the millers. After informal conferences and hearings, both in Washington and in Louisiana, a formal hearing was held on September 5 and 6, at which substantial agreement was secured, except on the amount of the milling or "conversion" charge. To settle this point the government made an audit of several Southern rice mills and proposed a figure for the conversion charge lower than that proposed by the Southern millers. This was accepted by the millers' committee, and on September 29 the marketing agreement was presented to a meeting of the Southern rice millers in New Orleans. All but three signed it, two of the three being the largest millers in the industry. They joined with the other 35, however, in requesting the Secretary to put all under license as a means of making the agreement effective. Their unwillingness to sign the agreement was based not on its price or conversion charge features but on the powers conferred on the control committee which it set up. Later they both signed the agreement and, upon approval by the Secretary of Agriculture, it became effective on October 16, 1933. A license essentially identical in its terms became effective on October 17.[6]

For the purpose of supervising the performance of the marketing agreement and to represent the millers in dealings with the Secretary, a control committee of seven members—two for Arkansas, two for Louisiana, and three for Texas—chosen by majority vote of all the millers was set up. This was analogous to the marketing board under the California agreement. No crop board representing growers such as that set up under the California agreement was provided under the original Southern agreement, since no acreage control features were included (see page 110).

This agreement, like the one for California, established a minimum price basis to be determined by the Secretary of Agriculture. Instead of starting with a clean rice price, however, and deriving the paddy price from it, the Southern agreement provided that the Secretary of Agriculture "shall fix minimum prices for No. 1 grade, prime milling quality of each variety of rough rice," the schedule for other grades to be computed by the millers in accordance with a scale of differentials attached to the agreement.[7] Resale prices were also established, it being provided that:

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[6] Unlike the California rice industry, the Southern millers also completed a code of fair competition and it was approved by the President on Nov. 21, 1933. Besides covering hours, wages, and general labor provisions, it had a section on unfair methods of competition which included false advertising, misbranding, producer standards, milling of rice not purchased by the miller, rebating, and like matters.

[7] These differentials could be changed by the Secretary if he did not consider that they accurately reflected relative market values. Likewise he could

> No miller shall sell or offer for sale for domestic consumption clean rice milled from a barrel of rough rice for less than the actual cost or replacement cost of such barrel of rough rice delivered at the mill,[8] plus the cost of conversion, the actual cost of the container and the marketing fund charge hereinafter provided for.

The milling charge or cost of conversion was set at 70 cents per barrel of rough rice, subject to change by the control committee with the approval of the Secretary. Uniform terms of sale and brokerage charges were also provided, as well as rules of general trade practice which forbade mixing, guaranties against changes in price, selling on consignment, rebating, free storage, misrepresentation, or misbranding.

The Southern rice marketing agreement, like that for California, contained a provision for a "marketing fund." Each miller was to pay into this fund the sum of 10 cents[9]

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change the minimum price upon reasonable advance notice to the control committee. The latter also could propose to the Secretary such changes in minimum prices as it thought desirable.

[8] Amended December 8 to eliminate original cost as a price basis. This was stated to be in the interest of simplification of enforcement of the agreement. Other changes of the same date called for the showing of evidence that the grower had received not less than the minimum price (thus eliminating speculative buyers between producer and mill) and brought exporters within the definition of "millers" in order to prevent export sales of rough rice from being made at less than the established price.

Amendment of Jan. 10, 1934 added to the section covering prices of clean rice three additional sections providing that the control committee might establish schedules of minimum prices based "in so far as possible on the items of cost enumerated in the original agreement." The committee might also establish schedules of minimum prices for export sale. The latter section made no mention of the minimum schedule of paddy prices, the standard conversion charge, and other cost items as a base for such export prices.

[9] Millers had had an ambitious plan of "industry advertising" to be supported from this fund. The Adjustment Administration, however, ruled that this was not a proper charge to be assessed on licensees. To meet this situation, the charge was reduced to 5 cents by amendment effective July 21, 1934, it being expected that the signatories to the agreement would continue the advertising plan through voluntary contributions of an additional 5 cents for

for each barrel of rough rice milled by him during the preceding month. If this had not been paid by the sixteenth day (later changed to the twenty-second) of the month following milling, the assessment would be increased to 15 cents per barrel. Any surplus remaining in the marketing fund after paying expenses incurred by the control committee was to be used at the discretion of that committee "to increase consumption of American grown rice, create new markets, and to maintain reasonable domestic prices by financing the export of rice."

The original marketing agreement for the Southern rice territory did not contain production control provisions, consideration of this matter having been largely deferred while marketing and milling issues were being disposed of. Thereafter attention was turned to a production control plan for 1934, which would be effective in keeping acreage at or below the level of 1933 in spite of the encouragement given by higher prices. After a series of local meetings at which growers considered the nature of the problem and made suggestions, it was agreed that an acreage cut of 20 per cent should be sought, and that growers would be given allotments on this basis. Each grower's share would be proportionate to his production during the preceding five-year period.[10] This plan was discussed at hearings held at Shreveport, Louisiana on January 22 and, after being accepted by the millers as an

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that purpose. By this time, however, both agreement and license were breaking down and practically no payments to the marketing fund were made after mid-summer.

[10] The Adjustment Administration assigned state quotas on this basis, and Louisiana and Arkansas followed the same procedure in arriving at individual quotas. Texas, though bound by the five-year basis for her total, made allocations to individual growers on the basis of the average of the three preceding years.

amendment to their marketing agreement, was approved by the Secretary of Agriculture and became effective on March 6.

It had been the intention merely to add the crop control provision as an amendment to the existing marketing agreement. Through an administrative slip, however, the old agreement was terminated and the amended form set up as a new agreement. This added somewhat to the difficulties of the situation, since several millers took this opportunity to escape from the agreement by refusing to sign the new document.

The crop control feature of the new Southern rice marketing agreement provided that, beginning July 1, 1934, the miller should withhold 40 per cent of the schedule price of any rough rice purchased by him. Unlike the California agreement, which had placed the administration of the crop control plan and of the fund derived from withholding part of the purchase price in the hands of the industry, the Southern agreement provided that the payments of the withheld portion of the price should be made to the Secretary of Agriculture, to be paid out by him to such growers as complied with the terms of the control program.

The procedure laid down was as follows: First, the Secretary should determine the total quantity of rice to be produced in each of the states. Second, producers would be invited to submit applications for acreage allotments and production quotas, stating the acreage planted and rough rice produced in each base year designated by the Secretary. Third, the Secretary should allot to the several producers quotas of such proportion of their base production as would bring the total product up to the quantity which he had determined it was desirable to produce. Each producer furnishing satisfactory evidence that he had limited his planted acreage to the allotment assigned him should by the end of the crop year receive payment which, added to the payment received when he delivered his rough rice to the mill, would not exceed the "Secretary's price" for rough rice. That is, he would receive the withheld 40 per cent of the price less his share of the expenses incurred in carrying out the production control program.

Procedure under the Southern agreement differed from that in California in that the making of allotments was left in the Secretary's hands rather than being turned over to a crop board representative of producers. However, for the purpose of administering the provisions of the production control program, the Secretary might set up a committee or committees to "verify applications, compute production quotas and acreage allotments, check acreage seeded by producers, and to perform such other functions as the Secretary may designate." By amendment effective July 21, 1934, there was established a producers' committee of seven members selected by the Secretary "to act as an intermediary between the Secretary and producers and between the millers and producers." It was to settle complaints which concerned only the interests of producers, and to investigate suspected violations of the agreements where the grower was a party to such violation, and to sit with the millers' committee to decide disputes and complaints which concerned both producers and millers' interests.

This amendment likewise supplemented the millers' (control) committee by a new millers' advisory council. One member of this council was to be selected by each miller signing the agreement or brought under any license supplementary to it. The advisory council was given power to select the members of the millers' committee, to advise with it, and to act as intermediary between it and the millers. No member of the advisory council could qualify for membership unless the miller whom he represented had filed with the rice section of the AAA a statement of the volume of rough rice milled or exported by such miller during the three preceding crop years.

ABANDONMENT OF MARKETING AGREEMENTS

It will be observed that the Southern rice marketing program, with its production control system directly under the Secretary of Agriculture, bore a closer resemblance to the commodity programs operated under Section 8(1) of the Adjustment Act than it did to the California marketing agreement supervised more largely by the industry or to other marketing agreements discussed in subsequent chapters. This difference grew out of solidarity in the Southern rice industry and in turn led to further complications. The attempt to collect the funds to be used in benefit payments as withholdings from the purchase price encountered difficulties from the start. Only such millers as were signatory to the agreement were bound by the plan. Other licensees, though brought under the same minimum price schedules and trade practice provisions as were the signers of the agreement, were free to pay the full paddy price to the grower when he delivered his rice to the mill. This immediately gave them a market advantage and tended to draw business into their hands at the expense of millers who were participating in the production control program.

Furthermore, the growing conditions were favorable and compliance with the production allotments not perfect. Some over-quota rice was also available at prices below the established minimum schedule. This situation created a strong temptation to evasion of the agreement and, particularly in the Louisiana district, a considerable number of new mills sprang up to take advantage of it. Most of them were of a very simple "huller-mill" type not capable of producing a polished white rice of high merchantable quality. It did, however, find ready sale in the local territory, where per capita consumption is very high. This tended to create unfair competition for the millers who were attempting to operate in conformity with the agreement, and they also encountered a certain amount of high-grade "bootleg" rice which found its way out of the local territory into the principal clean rice markets.

A succession of amendments were devised to meet these situations. One of them made grading of rough rice under the inspection service of the United States Bureau of Agricultural Economics compulsory as soon as the necessary machinery could be set up. Such standardization was necessary in order to check evasions of the minimum price schedules and to assure the grower the full price contemplated under the agreement.[11] On July 23, growers were allowed a leeway of 5 per cent in plantings above their individual allotments. On August 27 a new ruling permitted growers to harvest all their acreage; but, if this should exceed their allotment by more than 5 per cent, the amount of the adjustment payment was to be reduced 1 per cent for each 1 per cent of the acreage excess. This concession to individual growers was regarded as appropriate since total acreage was estimated to be slightly under the total allotment [12] and since the drought situation made it desirable that all food products be conserved.

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[11] Such grading and inspection was made effective on August 20 by administrative order of the Secretary of Agriculture.

[12] However, December crop estimates showed the acreage to be about 6 per cent above the allotment.

On September 17 a new administrative order set aside the check-off method of payment provided in the agreement as to all rice which came within the grower's quota;[13] that is, a grower could thereafter receive at the time of delivery to the mill the full 100 per cent of the base price on all except over-quota rice. On September 28 certain of the discounts in the schedule by which the various grades were adjusted to the base price were altered so as to prevent unduly heavy penalties on certain types of damaged or inferior rice. Finally, on October 15 the growers' market price was advanced on 13 varieties and a reduction made in the conversion charge allotted to millers.

These latter changes were designed to remedy what was considered to be an unduly wide margin between growers' prices and resale prices as formerly provided under the agreement and license. Subsequent events, however, seemed to indicate that the new adjustment erred in the other direction, and difficulties in carrying out the program, instead of disappearing, advanced to an acute stage. There arose a widespread demand from both millers and growers that the crop control plan be abandoned. This request was complied with on December 21. Thereafter effort was centered upon the formulation of a processing tax and production control program of the general type provided in Section 8(1) of the act.[14] To meet certain phases of the situation, however (notably exemption from the tax on floor stocks), new legislation was necessary. Hence a bill to amend the Agricultural Adjustment Act was introduced on February 1, 1935 in the House of Representatives; it became law on March 19.

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[13] On December 21 full payment at time of delivery was authorized for all rice.

[14] Proposals of this character had been coming up with greater or less force since early summer, some persons being desirous of making this procedure effective for the 1934 crop.

Meanwhile, with agreement and license practically inoperative in the Southern territory, the California rice growers were endeavoring to keep their agreement intact for the remainder of the marketing season for 1934 rice. We have already noted the fact that this agreement was on December 21, 1934 supplemented by a license. Such a measure had not been found necessary during the early days of the agreement since all millers had become signers of the marketing agreement. There was, however, the danger that other millers might enter the field as had happened in the South, or even that Southern millers might come into this territory and complicate the situation by offering to pay full schedule price without the 40 per cent deduction still required under the California agreement.

While the California agreement has been very effectively carried out, the economic problems have not been fully solved by it.[15] The "Secretary's price" for extra fancy clean rice at San Francisco was placed at $3.60. Under the provision of the agreement which permitted the millers' committee to set the trade price as much as 5 per cent above or below the Secretary's price, this committee set its base price at 105 per cent of $3.60—at $3.78. At this level marketings were not sufficiently rapid to permit of getting carry-overs down to the desired point. On the other hand, it permitted the entrance of some duty-free rice from the Philippines. Both millers' and producers' committees were considering the lowering of this price when, on October 15, the basic minimum prices were advanced in both the Southern and the California areas. Southern rice was advanced, some varieties by 15 and some by 20 cents per barrel, and the San Francisco clean rice price was moved up from $3.60 to $3.95. Since the California trade price could not fall more than 5 per cent below this rate, it had to be maintained at $3.7525. Hence, in December, the parties to the California rice agreement sought an amendment permitting the payment for over-quota rice of not more than 100 per cent or less than 10 per cent of the base price for the purpose of diverting such surplus rice into "non-routine" channels—chiefly for use as brewers' rice, feed for livestock, or for relief purposes. This amendment was approved by the Secretary and made effective on February 13, 1935.

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[15] With the control program reducing acreage about 3 per cent in 1934.

While there is every reason to suppose that the California rice industry could have continued to operate harmoniously and effectively under the marketing agreement, it was equally possible and perhaps simpler for them to secure production control by the processing tax method. This of course does not provide any machinery for dealing with marketing problems, but the small number of millers and the existence of a dominant co-operative influence made it possible for them to handle such matters without the support of a federal agreement. The California interests therefore were quite ready to go along with the move to change to the processing tax and benefit payment system. This was regarded as necessary in the Southern territory owing to the difficulty of getting a less organized and more widely scattered region united in support of a market adjustment plan. While it is to be presumed that the processing tax method will be more simple and effective as a production control measure, it seems unfortunate that the effort toward improving marketing conditions has thus been abandoned after one year's trial.

As stated in the introduction to this chapter, the objective of the rice marketing agreements was to provide a means for liquidating the abnormally large carry-over of rice and at the same time provide assurance that the acreage would be somewhat reduced or at least not again expanded. We have noted that the latter of these objectives was attained to a considerable extent under the agreement and has now been provided for under the stronger machinery of the processing tax procedure. In spite of high yields in the Southern territory which somewhat offset the acreage reduction, the first objective—liquidating carry-over stocks—was accomplished to a considerable degree. The carry-over of rough and milled rice in the Southern states was 77 million pounds on August 1, 1935 as compared with 187 million the previous year and 221 million pounds in 1932. However, the feasibility of attempting to maintain a high domestic price on an export commodity of which our production amounts to only an insignificant percentage of world production is yet to be tested.

CHAPTER VII

LIMITATION AND PRORATION OF PERISHABLE SHIPMENTS

We turn now from marketing agreements covering commodities designated as "basic" in the Adjustment Act to those not so enumerated. This group has been known as "special" crops and, more recently, as "general" crops. Since processing taxes and benefit payments were not made applicable to them, any price enhancement would have to be brought about through marketing agreements alone.

In Chapter I we referred to the fact that it was the activity of representatives of these "special crop" interests that was responsible in considerable measure for the addition of the marketing agreement and licensing provisions to the act as originally drafted. After the measure was put in force, these interests displayed early and persistent activity in promoting the use of marketing agreements for the benefit of their industries. Nine agreements relating to general crops were made effective before the end of 1933 with 20 in 1934 (besides one license without a parallel agreement), and 5 between then and July 21, 1935. Among these agreements there are groups so nearly identical in character that we shall be able to secure a comprehensive view of the undertaking and of all the distinctive devices employed by discussing a limited number of typical agreements under three general types.

The first group—dealt with in the present chapter—is characterized chiefly by temporary withholding of shipments, exclusion of low-grade product, the setting of total or period limitations to volume of shipments, and the allotment of quotas out of these totals.

SOUTHEASTERN WATERMELONS AND FLORIDA STRAWBERRIES

Simplest among agreements of the several types being considered with reference to special crops are those which provide (1) for limitation of shipments on a quality basis or (2) for withholding all shipments during some specified period. There are two such withholding agreements, one covering Florida strawberries, and the other the watermelon industry in the Southeastern states. Both these commodities are extremely perishable in character and subject to sharply fluctuating market demands. The occurrence of unseasonable weather at important consuming centers or other circumstances may cause a sharp fall in demand. If supplies are not correspondingly and promptly curtailed, they accumulate in dealers' hands and prices fall disastrously. The federal government has for some years sought to lessen this difficulty by developing a comprehensive market news service, designed to give shippers continuous telegraphic information as to market conditions and prices being realized. Various distributors' organizations and co-operative associations of growers have likewise sought to effect better supply and demand adjustment through more comprehensive and centralized schemes of market organization. The marketing agreement section of the Agricultural Adjustment Act, however, furnished a new implement for such endeavors, and it was rather promptly seized upon by both growers and shippers, who felt assured that such undertakings might now be increased in effectiveness. Marketing agreements supplemented by licenses promised to make it possible to bring all shippers of a commodity into concerted action without fear of penalty under antitrust laws.

The agreement for the watermelon industry of the Southeast covers shipping territories in Florida, Georgia, and South and North Carolina. This agreement was worked out by various growers, the Melon Distributors' Association, and the Sowega Melon Growers' Co-operative Association during the early summer of 1934 and was approved by the Secretary of Agriculture on August 6, becoming effective on August 10. It set up a control committee of eleven, five of whom are representative of shippers, five of growers, and one of the above-mentioned co-operative association. Whenever this control committee considers it advisable to limit shipments of watermelons, it may impose a restriction in either one of two forms. First, it may prohibit the shipping of any watermelons of a grade or grades other than United States Grade 1.[1] Such an order may be resorted to if it appears that there is a general excess of production which promises a somewhat continuous depressing of the market to unremunerative levels. If, however, the difficulty is of a more temporary and acute character, due to unfavorable consuming conditions at the market or to weather conditions in the growing territory, the control committee may meet the situation by declaring a "shipping holiday" of such duration as it thinks necessary, not exceeding 48 consecutive hours. Such embargoes may not be declared at intervals less than five days apart. If an order of either of these kinds is to be issued, the control committee must give not less than 36 hours' notice to shippers and growers. Copies of the order are sent to the Secretary of Agriculture, who may cancel or modify it in any manner he deems fit.

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[1] In order to protect the grower whose crop is largely of inferior quality the license provides that upon his showing that he would be harmed by this type of restriction, the control committee shall exempt him from the operation of the order to the extent necessary to permit him to ship the same percentage of his total production as is allowed to other shippers.

Besides the control committee, there is an advisory committee for each of the four states of the Southeastern area. These advisory committees consist of eight members, four selected by the shippers and four by the growers. They are responsible for supplying the control committee with data covering growing, shipping, and marketing conditions in their respective states, particularly with regard to the quantities, grades, and sizes of melons available for shipment from time to time during the shipping season.[2] To make the terms of the agreement binding upon all distributors, the licensing of shippers was requested in Article X of the marketing agreement, and a license was made effective on August 20.

The watermelon agreement was proposed in May, when prospects pointed to a heavy crop. Owing to weather conditions and disease, the crop was reduced to moderate proportions and returns to growers were on the whole satisfactory. Hence no haste was felt about getting the agreement into effect, and its provisions for the suspension of shipments were not called into play during the 1934 shipping season. The higher prices received by growers for the crop of 1934 led to an expansion of acreage in 1935 and as early as February 1935 a series of local meetings was begun with a view to informing producers as to the terms of the agreement and taking steps to put it in operation.

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[2] Sec. 4 (3) of the agreement provides also that the control committee "shall obtain the recommendations, if any, of each such [advisory] committee as to the necessity for, and the scope and duration of, limitations on shipments during such limitation period."

The control committee at its organization meeting on May 6 adopted a resolution excluding all melons below United States Grades 1 and 2 for the entire season. Weather conditions advanced the ripening period about ten days, and shipments from Florida began on May 13. For the remainder of that month and all of June, temperatures in the consuming markets of the North ranged below seasonal normals and the problem of maintaining a market proved serious. Heavy loadings from Georgia began on Monday, June 10, when there were about 150 cars, or practically double the amount expected. Buyers were found for less than one-third of the loaded cars, and a call was issued for a meeting of the control committee to consider what action should be taken. As a result a shipping holiday of 48 hours was called for the following Thursday and Friday and immediately announced by wire and radio.

Loadings just before and just after this holiday were extremely heavy, so that it is doubtful whether any considerable quantity of melons was actually withheld from market. Prices did not rise, but there was a feeling that the holiday had prevented a severe break in the market that would otherwise have occurred. The field representative of the AAA reported: "Much of the favorable effect of this holiday was due to the establishment in the minds of those concerned of a belief that the control committee would take whatever action might be necessary to protect the watermelon market."[3]

As cool weather continued, the control committee on June 15 ordered limitation of shipments of watermelons to United States Grade 1 for a period of 13 days, beginning June 18. Owing to the prevailing high quality of melons being produced, this restriction did not effect a large reduction in quantity. Track holdings in the terminal markets mounted, and on June 26 the committee ordered another 48-hour suspension of shipments, covering June 28 and 29. Inasmuch as this shipping holiday was followed by a Sunday, there was a virtual three-day suspension of shipments. There had been an advance in price of $25 a car after the announcement of the shipping holiday and prices continued to gain during the week which followed. Thereafter there ensued a period of some ten days of heavy rains which greatly curtailed the crop and no further suspension of shipments was ordered.

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[3] H. B. Davis, *Special Report on the Operation of the Marketing Agreement of the Watermelon Industry in the Southeastern States.* The writer has drawn upon this report for numerous other details of the discussion.

As the shipping season moved into North Carolina, demands were made from this section for a prohibition of shipments of melons below United States Grade 1. After deferring action on this request for four days, the committee on July 17 ordered such a restriction to be effective from July 20 to July 27. On August 3, it ordered discontinuance of all regulations as of August 15.

Growers regarded the results of this agreement as distinctly satisfactory. The exclusion of cull melons and restriction of shipments of Grade 2 improved the average quality of shipments and this was regarded as having a favorable effect on prices, whereas the shipping holidays were thought to have had a steadying effect on prices. It is expected that this agreement will be put in operation again next year if there are prospects of a large crop.

The Florida strawberry marketing agreement follows the same general line as that of the watermelon industry in the Southeastern states. Under the terms of the strawberry agreement a control committee may,[4] whenever it deems that prevailing marketing conditions make it advisable to limit shipments of strawberries, issue an order prohibiting licensees from shipping out of the state any strawberries of a grade other than the grade or grades specified in the order or of a size smaller than specified. Shippers must be given 48 hours' notice of such an order, and copies must be promptly mailed to the Secretary of Agriculture. No complete suspension of shipments is provided for.

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[4] Consisting of one member designated by each "shipper and affiliates, subsidiaries, agents, and representatives who shipped in the aggregate at least 300 carloads of strawberries" during the preceding season; one designated by

The strawberry marketing agreement was proposed by the Florida Strawberry Marketing Association, the Dover Shipping Association, and seven other concerns engaged in shipping strawberries. A public hearing was held in Florida on January 3, 1934 and the agreement tentatively approved by the Secretary on March 10. Owing to late setting of the plants and to subsequent dry weather, crop prospects were not such as to create any pressure to get the agreement into operation. It was, however, completed and given final approval, to become effective on August 5.

At a meeting held in October for the election of members to the control committee, the growers of the Plant City district protested against the basis of membership and also adopted a resolution demanding a guaranty of indemnities to strawberry growers for berries withheld from shipment. This protest was based upon the fact that prohibitions against the shipping of fruit below a certain grade would, at times at least, work a hardship on

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the co-operating marketing association; one elected by majority vote of the shippers who individually shipped between 100 and 300 carloads during the preceding season; one elected by shippers who individually shipped less than 100 carloads each; and one shipper selected by agreement between the commissioner of the Florida State Marketing Bureau and the director of the Agricultural Extension Service of the University of Florida.

particular growers or on sections which had suffered from adverse weather conditions or from plant disease or pests. In defense of the provision, it has been argued that such inequalities as would not be adjusted by the control committee (see note 1, page 121) would tend to average out. The proposed amendment has not as yet been incorporated in the agreement.

Owing to the severe frosts in December 1934, shipments from this territory were so moderate in 1935 as not to call for regulatory action. As to the future, there is some uncertainty as to how successfully this agreement could be operated. There are a considerable number of producers of the small-scale type dependent upon shippers or others who finance them in the production of their crops. There is a minority co-operative interest represented by several local shipping associations which has in some years used a common co-operative sales agency. With the favorable experience of this year in the adjacent watermelon and celery industries under their agreements, it seems likely that the Florida strawberry agreement will be put in operation next year in the event that the crop is large.

CALIFORNIA DECIDUOUS TREE FRUITS

Our second type of marketing agreement for horticultural products is somewhat more elaborate than the simple withholding device we have been considering. The situation giving rise to this second type of agreement is analogous to the first in that it also relates to commodities of a highly perishable character produced far from the principal consuming markets. In view of the fact that demand for such products does not expand readily with declining prices, any considerable excess supply quickly gluts the market and is likely to push prices down to a point where growers and shippers do not recoup their costs or, in view of the high transportation and refrigeration expense, even get back their shipping charges.

In order to meet such situations, many efforts had, even before the passage of the Agricultural Adjustment Act, been made through private initiative, co-operative endeavors, and ultimately in three states through legislative enactment,[5] to set up some type of control which would limit shipments to times and places at which remunerative prices could be secured. Much previous experience,[6] therefore, was embodied in the proposal submitted by California shippers in July 1933 for a marketing agreement covering deciduous tree fruits except apples.[7]

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[5] In the spring of 1933, California passed an "agricultural prorate act," designed to effect such results. (L. Calif., 1933, Chap. 754.) See also H. E. Erdman, "The California Agricultural Prorate Act," *Journal of Farm Economics,* October 1934, and C. C. Teague, "California Proration Plans for Fruits and Vegetables," *American Co-operation,* 1933, p. 35. This act was held unconstitutional by the lower and appellate courts in the summer of 1935. See p. 159.

In August 1933 the state passed another statute known as the California Agricultural Adjustment Act, designed to give full legal force and effect to all federal marketing agreements and licenses in intrastate as well as interstate business and exempting them from the anti-trust and unfair competition laws of the state. L. Calif., 1933, Chap. 1029.

In December 1933 the state of Washington passed an essentially similar measure (L. Wash., 1933-34, Chap. 12, extraordinary session). While this act was designed primarily to complement the marketing agreement and license features of the federal act, Section 7 provided also that the director of agriculture was empowered "to provide for the regulation and control of production [as well as] storage, transportation, sale, and distribution . . . for such time as the present economic emergency exists."

The state of Oregon passed a somewhat similar law (L. Ore., 1933, Chap. 37, second special session) and a prorate act similar to that of California has been under consideration in Arizona.

[6] An illuminating discussion of the undertaking in California may be found in E. A. Stokdyk, "Economic and Legal Aspects of Compulsory Proration in Agricultural Marketing," *University of California Bulletin No. 565,* December 1933, pp. 17 ff.

[7] The commodity chiefly affected was pears, but peaches, plums and fresh prunes, cherries, apricots, and persimmons were also included. Apples were

The California deciduous agreement was one of the first marketing agreements to be approved by the Secretary of Agriculture. Negotiations were begun shortly after the passage of the act, a formal hearing was held on August 1, 1933, and the resulting agreement was signed by the Secretary on September 1, effective the following day. The agreement is comparatively simple in character. It sets up an executive committee consisting of the general managers, or their designated representatives, of all shippers signatory to the agreement who shipped 500 or more carloads of deciduous fruit during 1932, together with three additional members elected by signatory shippers who individually shipped less than 500 carloads each. This executive committee acts as the general supervisory agency and intermediary between the Secretary of Agriculture and the shippers, and it handles disputes arising in connection with performance of the agreement, subject to appeal to the Secretary. The expenses of this committee are assessed upon all shippers in proportion to the volume of business handled by each.

For the supervision of actual prorate undertakings, the shippers elect a proration committee consisting of seven members, at least three of whom must be growers of deciduous fruits or representatives of co-operative organizations of growers. This proration committee assembles data on the production and marketing conditions in the deciduous fruit trade and, with the advice of a sales managers' committee, estimates the amount of any varieties of deciduous fruit which are available for shipment from

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later covered by a separate agreement (see p. 132). Other than deciduous fruits were also covered by separate agreements, such as those for Tokay grapes (p. 134), oranges and grapefruit (p. 149), and so forth.

the several districts during designated periods, together with the amount of such varieties "which it is deemed advisable to ship" from these districts at the designated times. When it appears that the total amount available would, if shipped, unduly depress the market, the proration committee decides on a shipping quota for the whole territory during a designated period and allocates this to districts and shippers. Each district is given a pro rata share determined on the basis of the proportion which the total amount to be shipped bears to the total amount available in all districts, and the amount which each shipper in each district is allocated is in the same proportion. Each shipper divides his total allotment "among the growers from whom he accepts deciduous fruit for marketing."[8] Any shipper who ships more than the allotted amount during a given period must deduct double such overshipment from the allotment made him during the next succeeding period.[9] Undershipment in one period may be added to the prorate of the next succeeding period.

There is also a sales managers' committee of seven. It is elected by the shippers and at least one of its members must be associated with a co-operative marketing agency. It acts, as we have seen, in an advisory capacity to the proration committee.

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[8] This procedure assumes that the proration committee has complete and accurate information as to all the fruit coming forward for market and puts the burden of withholding from market on a flat percentage basis in accordance with the productive conditions of the given year. In other marketing agreements (see p. 154), recognition has been given to the desire of certain growers that some account be taken of their vested interest in the market on the basis of their production in previous years. This "past performance" basis is analogous to the "base period" used in the contract quotas under the benefit payment provisions of the act.

[9] By amendment of July 22, 1934. Originally a shipper might deduct an overshipment during one period from his allotment for the next period, and the double deduction was not effective until the second succeeding period, when it applied to the net overshipment of the two preceding periods. This arrangement was discontinued because it resulted in too much confusion of shipping schedules and ineffective regulation during later periods.

Each shipper is required to furnish such records and accounts of his operations to the sales managers' committee and the proration committee as the executive committee may require. If the executive committee receives information that any shipper is violating the terms of the marketing agreement, it shall investigate the case and call upon the shipper for a statement of the facts under oath. If, after due consideration, the committee believes the charges to be true, "it shall order such shipper to discontinue such violation and in the event of non-compliance by the shipper with such order it shall report such non-compliance to the Secretary."

In order to bring the whole industry under the system of control voluntarily accepted by the 85 per cent who became signers, the Secretary of Agriculture about a month later issued a license (effective October 9) identical in substance with the terms of the agreement.

The California deciduous tree fruit agreement was not brought into active operation during the year 1933 because unfavorable growing conditions kept supplies of the various fruits down to manageable proportions. At the end of May 1934, however, the prorate committee decided that supplies of plums available for shipment were in excess of demand at reasonable prices and ordered shipments limited to 150 cars on Friday, Saturday, and Sunday, June 1 to 3 inclusive. During this period actual shipments amounted to 160 cars and it appeared that supplies would continue to be excessive. Hence a comprehensive scheme of proration was set up to continue to the end of the shipping season, but was discontinued because the committee was unable to make satisfactory estimates of available supply. As to peaches, no restriction was placed upon bona fide f.o.b. orders or sales for cash, but no "price arrival" sales were permitted, and the number of "rollers" (that is, cars shipped unsold either on consignment or subject to diversion in transit) was limited to the number of the shippers' actual total loadings during the preceding 24 hours. The purpose as reported in the trade press was:

> To keep the trade informed on the situation, and each man will have a chance to buy peaches at a stabilized price through the regulation and careful control of rolling cars. There will be no limit to the number of cars that can be bought f.o.b. for cash or on bona fide orders . . . as handlers will be able to buy peaches f.o.b. as low as the next man, so that there will be no need for chiselling or knocking down the price to where neither receiver nor shipper can show reasonable profit.[10]

The regulation of shipment of Bartlett pears is an important part of the task of the California deciduous agreement and a combination of devices has been developed for handling it—first, grade and size limitations, second, the restriction of movement from railroad concentration points, and finally a shipping holiday arrangement to facilitate the control of out-of-state movements at concentration points. In order to perfect this machinery, the agreement which had been in effect for nearly two years was superseded on July 17, 1935 by a new agreement. This provides not only for period-to-period proration of shipments and limitation of the size and grades of fruit which may be shipped but also day-to-day regulation of shipments from railroad concentration points. Under the latter provision cars may be held at such points for periods not more than four days in length with limitation of the number which may be released each day. If it is not possible to equalize the out-of-state movement of cars by holding within the four-day limit, the committee may in the case of Bartlett pears provide for a period not to exceed 48 hours, during which no shipments may be made from local loading stations to the concentration points.

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[10] *New York Packer,* June 30 and July 7, 1934.

Under the new deciduous fruit agreement, grower participation is increased. There are six commodity committees to supervise the markets of the several fruits handled. These commodity committees each select from one to four grower members of a control committee which is now constituted of 13 producers and 12 shippers. The successful completion of these changes and inauguration of a new agreement seems to show considerable vitality on the part of this market adjustment effort and to argue the probable continuation of the experiment.[11]

Producers of California Gravenstein apples during 1933 operated a prorate plan under the state law. On August 5, 1934 Secretary Wallace approved an apple marketing agreement under the AAA, which, in its major features, is identical with the agreement for deciduous fruits. Owing to unfavorable weather, however, the apple crop was so short that no limitation and proration of shipments was called for in 1934. It was put in operation for a period of three weeks during the 1935 season. However, the crop was late, thus destroying the seasonal advantage ordinarily enjoyed by this section. Prices were so low that shippers did not in any week under proration come anywhere near the quota allotted.

No quantitative estimate of benefits under these marketing agreements is possible at this time, and analysis of the possibilities and limitations of such undertakings is deferred to our closing chapters.

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[11] For the full text of this agreement (in amended form), see Appendix A.

OTHER SIMPLE PRORATION AGREEMENTS

The vineyardists of California probably are the group which, with the single exception of the citrus growers, has had the most extensive experience in the field of industry stabilization. Producers of certain types of grapes have had a succession of consolidated organizations, either co-operative or proprietary in form, which run back to the 90's. At times shippers, bankers, and—since repeal—wineries have joined with the growers in attempts of more or less temporary character to adjust supplies of table, juice, and raisin grapes to the demand which could be found at a remunerative price.

Since 1922 there has been an almost continuous succession of such undertakings—the Sun Maid Raisin Growers' Association and the California Fruit Exchange, as co-operatives promoting clearing-house arrangements, the California Vineyardists' Association, the California Fruit Industry, Inc., and the California Grape Control Board, Ltd., which was sponsored and given financial aid by the Federal Farm Board.[12] None of these ventures manifested any high degree of cohesive strength; all soon fell apart because of their inability to bring any measure of compulsion to bear on their members. The coming of the Agricultural Adjustment Act was therefore hailed as a remedy for this defect in previous efforts toward an integrated marketing plan.

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[12] See *Annual Report of the Federal Farm Board,* June 30, 1930, p. 18; the same, June 30, 1931, p. 59; Eric Kraemer and H. E. Erdman, "History of Co-operation in the Marketing of California Fresh Deciduous Fruits," *University of California Bulletin No. 557,* p. 95; E. A. Stokdyk, "Marketing Tokay Grapes," *University of California Bulletin No. 558,* p. 45; Leo Monihan, "Organization and Operation of the California Vineyardists' Association," *American Co-operation,* 1928, Vol. I, p. 207.

Producers and shippers of Tokay grapes had had an informal working agreement in 1932 and, with the passage of the Adjustment Act, proceeded to revise and perfect it into a proposed agreement which they brought forward for the approval of the Secretary of Agriculture. With less than the usual delay due to necessary routine, final approval was given and the agreement made effective September 30, 1933 (license effective October 14). When this agreement went into effect, the shipping season was already at its height and prices had declined to a point where they returned the grower little more than harvesting, packing, and selling costs. As soon as this agreement became operative prices began to improve,[13] and at the end of the season officials of the AAA estimated that grape producers had received, on the average, approximately $1.22 a package as compared with $1.11 in 1932. They estimated that it cost approximately $1.00 per crate for harvesting, transportation, and selling charges, and that net return to the growers therefore was double what it had been in 1932. This was in part due to the resumption of wine making in California, which provided a very satisfactory outlet for grapes not shipped for table use, and to rains during the latter part of the season, which curtailed shipments to Eastern markets. However, it was felt that the agreement had also been of service in enabling growers to take advantage of these conditions, and its results were regarded as so satisfactory by grape interests[14] that it was continued in force.[15] The crop of 1934, however, was so much reduced that no proration was put into effect. During the two peak weeks of the movement, growers were desirous of prorating shipments but the shippers blocked such action. Strong sentiment has developed in favor of terminating the old agreement and not attempting any further market adjustment operations until a new agreement can be secured in which growers would have a majority voice on the control committee.

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[13] "The agreement immediately checked the decline as soon as it became effective. Both f.o.b. and delivered prices strengthened within a few days to the extent of at least 15 cents a crate. The outstanding effect of the control was the definitely stabilized market. There were no bad breaks in 1933, none of the auction averages dropped below the costs of harvesting, transportation and selling. In 1932, averages had dropped below slightly higher fixed charges on 20 days. The f.o.b. demand was better in 1933 than in 1932 and a much higher price relative to the delivered auction price. Total shipments in 1933 slightly exceeded those of 1932. The growers and shippers estimate that the control saved the Tokay industry at least $500,000." Robert C. Butner, Special Crops Division, AAA, address to National League of Commission Merchants, Washington, D. C., Feb. 20, 1934.

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[14] Shippers of table grapes in other sections than California also manifested considerable interest in the possibility of using marketing agreements. A hearing was held on Aug. 14, 1934 on the proposed marketing agreement for shippers and producers of fresh grapes grown in Arkansas and Missouri (the Ozark district). It provided for the limitation and proration of shipments when deemed advisable by the control committee and even the complete suspension of shipments when markets became too seriously glutted. This proposed agreement, however, was never completed and approved.

Michigan shippers and producers also brought an agreement to the formal hearing stage but failed to complete it. It provided for proration of shipments and this might, in the judgment of the control committee, be accompanied by the setting of schedules of minimum prices.

There was also a rather elaborate proposal for shippers and vintners of wine grapes grown in California which came to formal hearing on Sept. 10, 1934. It was designed to limit shipments of wine grapes outside the state, to set up a schedule of minimum prices for grapes purchased for manufacture within the state, and to prohibit the use of sugar (other than grape sugar) or other adulterant or substitute in the making of wine, grape must, concentrate, or grape brandy. Vintners and shippers were to make payments on all purchases or shipments in an amount per ton specified by the control committee, these payments to be carried into a surplus control fund. This was to be used to reimburse growers for surplus grapes which could not be disposed of under such limitation of shipments and minimum price schedules as might be set up.

[15] One company covered by the Tokay grape marketing license refused to furnish to the proration committee the information required as to shipment of grapes, thus making it difficult to make the proper allocation of the grapes which could be shipped. This company also shipped large quantities of fresh grapes for which it had received no allocation, and failed to abide by the terms and conditions of the license. As a result, the Secretary of Agriculture, on April 28, revoked its license.

Other agreements of this same general type were effected by the handlers of fresh asparagus grown in California,[16] the Florida celery industry,[17] shippers of Southeastern potatoes,[18] shippers of fresh lettuce, peas, and cauliflower grown in western Washington,[19] shippers and producers of Colorado peaches,[20] and shippers of fresh peas and cauliflower grown in Colorado.[21]

The fresh asparagus agreement, designed as part of a co-ordinated plan which included a license for the asparagus canning industry, functioned effectively up to the date when the packing season was permitted to open under the terms of the canners' license. Thereafter, packers demanded delivery for canning even though the asparagus could have been sold in the fresh market to the financial advantage of the growers. This was in part due to unexpected growing conditions. In order to remedy this difficulty and also to take advantage of other phases of the experience of 1934, new marketing agreements for both fresh asparagus and canning asparagus were put in effect on April 3, 1935. The fresh asparagus agreement proration is provided under two alternative methods—one on a volume basis and the other on the basis of acreage. In case the proration committee decides to use the acreage plan of proration, it may combine with it a control of car movement from concentration points similar to that employed under the deciduous tree fruit agreement. This would enable it to equalize out-of-state shipments in case weather conditions brought short periods of excessive harvesting. The co-ordination of this agreement with the canning asparagus agreement is discussed on page 177.

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[16] Agreement effective Mar. 17 and license Mar. 20, 1934.

[17] Agreement effective Apr. 28 and license May 1, 1934.

[18] Agreement effective July 13 and license July 14, 1934.

[19] Agreement and license both effective July 21, 1934.

[20] Agreement effective No. 6, 1934. No license. There was also a similar prorate agreement proposed for the Georgia fresh peach industry. Hearings on this agreement were held at Macon, Ga. on May 8, 1934 and considerable opposition to the plan appeared. Some of the growers wished to have the limitation of shipments put entirely on a grade or size basis. Some thought it should be a flat percentage, and some believed that instead of merely withholding shipments, a certain proportion of the tree should be completely stripped before the fruit came to marketable condition. There were also questions as to the co-ordination of the Georgia proposal with some plan for other early peach areas, notably, those of the Carolinas and Tennessee. Eventually, the Georgia proposal was dropped entirely.

[21] Agreement and license both effective Jan. 15, 1935.

The Florida celery agreement departed somewhat from previous arrangements[22] by giving larger participation on the control committee to growers' representatives. There were eight growers' representatives, matching the eight shippers' representatives. In spite of the fact that some 750 acres of celery had been plowed up during the 1933 marketing season in order to support prices, some opposition to the proposed AAA agreement developed. This was based largely on the absence of any similar control in other celery producing sections and on the highly competitive relationship between celery and other winter fresh vegetables. It was also asserted that no emergency existed inasmuch as the marketing situation was "equal to or better than the period 1909 to 1914, which period is referred to in the Agricultural Adjustment Act as a basic period for adjusting prices." By the time the agreement had received the Secretary's approval, the shipping season was nearing its close and no proration was undertaken.

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[22] Exceptions were ripe olives and asparagus. Marketing agreements made since the celery agreement have continued this practice of giving growers equal representation with shippers on control committees. Even in the earlier agreements, there was of course a considerable amount of grower representation involved in the inclusion of co-operative organizations among the shipper representatives. This issue will be discussed in some detail in Chap. XI.

During 1935 the agreement operated actively and successfully, with shipments prorated over an 11-week period. Some discussion of results is presented on pages 330-33.

Growers of early potatoes, faced with an increase of acreage as a result of the stimulating effect of favorable prices in 1933, offered proposals for two marketing agreements, one covering the Southeastern early potato district, and the other the Southwestern district (western Florida, Alabama, Louisiana, Mississippi, Tennessee, Texas, Arkansas, and Oklahoma). The former was not finally approved until the shipping season was over for all except the northern part of the Southeastern area. It was not found entirely satisfactory in operation and on September 29, 1934 some thousand potato growers from the Carolinas and Virginia met at Washington, North Carolina to urge the necessity of a more effective program which should cover production control. They indicated a willingness to accept the existing marketing agreement as an emergency measure if it could be modified to provide for allotments to individual growers. But they also expressed an intention of pressing for the inclusion of potatoes as a basic commodity in the Adjustment Act.

During the early months of 1935, the agreement for the Southwestern states was brought into the field of active consideration again and embraced also Kansas and Missouri. This latter district advanced proposals for a separate agreement last year but at the hearing on December 17, 1934 joined with the other Southwestern states. Meanwhile, representatives not only of these two sections but also of the late-potato sections including Maine, New Jersey, New York, Michigan, and Minnesota were stressing the need of a national potato marketing plan and to this end proposed the inclusion of potatoes in the list of "basic" commodities and the levying of a processing tax. It had likewise been proposed that production should be controlled by a relatively heavy tax on all potatoes above allotted quotas after the general manner of the Kerr-Smith tobacco control act. A bill embodying such proposals was included among the amendments to the Adjustment Act approved August 24, 1935. There has been some suggestion that agreements excluding potatoes below No. 1 grade in certain areas of high production be employed this winter, before the new law could become effective.

The marketing agreement covering lettuce, peas, and cauliflower from western Washington[23] was regarded as successful during the 1934 season, but actual operations were conducted largely under the state law rather than under the AAA. The proration of shipments under state control began about the end of May, whereas the federal agreement was not approved by the Secretary until July 21. Besides commodities covered by the AAA agreement, the state control covered tomatoes, melons, cantaloupes, and early potatoes. This state law was later declared unconstitutional.

The Colorado agreement covering fresh peas and cauliflower has been operating successfully during the present season with a degree of voluntary co-ordination between its operations and those of the Washington agreement. It was felt that southern Idaho should also be covered by an agreement, particularly with reference to peas, and the Colorado committee did in fact approach the Idaho shippers during the current season in an effort to get an informal working arrangement. No formal marketing agreement, however, has yet been developed.

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[23] A proposed marketing agreement for handlers of California and Arizona vegetables (except potatoes, onions, garlic, and asparagus) was brought to formal hearing on Dec. 18, 1933, but was never completed.

The Colorado peach agreement is distinctive in that it constitutes the one instance in which the method of open price posting has been actually carried into effect. The agreement provides: "In order to stabilize price quotations to producers, the control committee shall require . . . each shipper who intends to quote, offer for sale, or sell peaches [to] post his schedule of prices covering each grade, variety and size thereof with the manager." [24] If any shipper desires to lower his prices, he must post a new schedule which, however, may not become effective until after such period as the control committee may designate. Upon the posting of such a new schedule by any shipper, the manager shall notify all shippers of the new prices and that they are free to sell at these quotations. This phase of the agreement developed out of a previous voluntary practice among handlers of Colorado peaches. Because of this background and the fact that their numbers are very small and the district compact, the enforcement of such an agreement is practicable in this instance, whereas it might encounter much more serious difficulties elsewhere (see pages 344-45.

NORTHWEST DECIDUOUS TREE FRUIT

The marketing agreements which we have been discussing thus far in this chapter have had no price-control provisions. Instead of naming a minimum price and abiding by the decision of the market as to what volume of supplies would be absorbed at or above that level, these agreements have selected volume of shipments as the factor to be brought under control as the means of bringing about a desirable price level. We turn now, however, to an agreement which, as an alternative for use of the proration devices, also provided for the naming of minimum prices below which sales would not be permitted. This is the marketing agreement for Northwest fresh deciduous tree fruit.

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[24] An officer appointed by the control committee to assist in carrying out the agreement.

The area covered by the Northwest fruit agreement embraces nine districts in the four states Washington, Oregon, Idaho, and Montana. Their fruit industries had been so hard hit during the 1931 and 1932 marketing season as to be on the verge of bankruptcy[25] and threatening to involve various financial agencies which had extended credit to them. Early in 1933, therefore, a move was

[25] "This distressed condition naturally led to widespread discontent among growers, and a rapid development of unfair and unsound practices in connection with the marketing of fruit. These continued up until the time the agreement went into effect. A determined effort is now being made to put a stop to all unfair or demoralizing practices, some of which have threatened to wreck the industry.

"For example, during the past year or two, hundreds of thousands of boxes of apples have been exported to European receivers for guaranteed consignment advance, frequently as low as 25 cents a box. It costs about 75 cents per box to put the fruit aboard the cars. The growers who supplied this fruit were told by the brokers and agents representing European firms that they would get as much more than their guaranteed advance as the fruit netted, but the receivers apparently made very little effort to sell it at a price higher than would return the advances, and the growers in practically every instance received nothing additional. The consigned fruit came in competition with fruit that had been sold outright for cash, for several times the guaranteed advances, with the result that the outright buyers were visited with tremendous losses, and vowed that they would never again put up their money for an industry that penalized buyers instead of protecting them. The situation at the beginning of this season was very critical, and it appeared almost certain that there would be no foreign buying, and that the export business, upon which the Northwest apple industry is absolutely dependent, would have to be conducted upon an open consignment basis. The marketing agreement met this issue by shipment control and after the European trade became convinced that the agreement would be enforced, the situation changed, and there has been a heavy trade on an outright sale basis." Robert C. Butner, address to the National League of Commission Merchants, Washington, D. C., Feb. 20, 1934.

started, largely under the influence of the federal credit agencies of the Portland district, to insure better conditions during 1933 by developing some form of centralized control of shipments which would hold out some hope of less destructive competition in 1933. The result of this effort was the formation of the Northwest Fruit Industries, Inc. (popularly known as NFI), representing approximately three-fourths of the shipping interests. Upon the signing of the Agricultural Adjustment Act, this group moved vigorously to take advantage of its facilities through the setting up of a marketing agreement which would become operative for the 1933 season. After some unavoidable delay, such an agreement secured the final approval of the Secretary of Agriculture on October 13, to become effective the following day. While it had the support of the necessary majority of the interests involved, elements of opposition were clearly discernible. All shippers were brought under the terms of an accompanying license which became effective on October 28.[26]

The Northwest deciduous tree fruit agreement is somewhat more complicated in its administrative provisions than any which we have previously considered, owing to

[26] A considerable phase of the activity under the deciduous tree fruit agreement related to Bosc or winter pears of the district. There is also an early pear industry, both in the Northwest and in California, which ships fresh pears for table use and also supplies the local canning industry. Proposed agreements were prepared for both Pacific Northwest Bartlett and California Bartlett pears in 1934. Both included a "Pacific Coast stabilization plan," designed to co-ordinate the whole early pear industry. The two agreements had identical provisions for the establishment of shipping and canning quotas and the proration of that part of the "available tonnage" which the control committee should designate as "salable tonnage." It was not possible to secure agreement on the complicated details of these proposals during the 1934 season, but in much simplified form they have been brought up for consideration for 1935. Further reference to these agreements will be made in the following chapter (p. 164) in connection with co-ordination schemes. See also note on p. 290 for demand of canners to be excluded from the amended act.

the character of the commodities covered, the numerous scattered districts involved, and the greater variety of the price-stabilizing devices employed. First there is a general control committee selected on a district basis similar to those with which we have already become familiar. This committee may in turn set up commodity committees "for apples, pears, prunes and cherries, and for such other fruits as the control committee may from time to time deem desirable." At least half the members of these commodity committees must be growers who are chosen from nominees named by the growers in each district in proportion to the tonnage of fruit shipped by the district. The control committee is further empowered to appoint an auction committee for each kind of fruit handled in an auction market and a terminal committee at the auction market to assist the control committee and any commodity committee in carrying out the auction prorates, which are a distinctive though largely inoperative feature of the Northwest tree fruit agreement.

Of the control devices employed in this "three-way" agreement, the first is the ordinary proration of fruit shipped unsold from the producing territory. It is similar to the simple prorate agreements which we have already discussed. Second, commodity committees may from time to time fix minimum prices at which their respective fruits may be sold to handlers f.o.b. the local shipping points. Such proposed prices must be agreed upon by at least two-thirds of the membership of the commodity committee by a recorded vote, must then be approved by the control committee, and must be published. They become effective only after some interval designated by the committee, and are subject to the disapproval of the Secretary of Agriculture.

The third control method provided in the Northwest tree fruit agreement (Article VII) relates to the control of auction sales. When any commodity committee decides that it is desirable "to attempt to control or regulate the auction marketing of its fruit," it becomes the duty of the auction committee to determine the total quantity of the given fruit to be sold in each auction market designated by the control committee and to assign a quota of this fruit to each handler equitably "in proportion to the amount of fruit each intends to sell in the respective auction markets during the control period."

The terminal committee, like the auction committee, is "composed of such handlers and such other persons as the control committee may designate." The function of the terminal committee is to regulate as far as possible the number of carloads of the particular species of fruit which shall be offered in its auction market from day to day during the control period, so that supplies may be adjusted to demand in as orderly a manner as possible. Handlers must abide by the rulings of the terminal committee in offering such fruit as is allotted to them.

The knowledge that this agreement was in the process of formation appeared to exercise a steadying effect on the market for pears, apples, and the minor fruits involved, even before it had actually come into effect. Thereafter no genuine proration was undertaken. What was done in the direction of limiting supplies was to regulate the shipment of C-grade apples, No. 2 prunes, and certain sizes of Bosc pears. Minimum prices were named by the commodity committees for prunes, apples, and pears. Auction control was undertaken only for pears.

For some weeks the agreement worked reasonably well. The administrative difficulties, however, were very serious in view of the non-co-operative attitude of many of the licensees, the wide spread of the territory, and the necessity of getting the approval of members of the control committee by telegram on questions about which they could be only rather remotely informed. Committees which named minimum prices frequently did nothing to see that these prices were observed or that the AAA enforcement machinery was brought into operation. The "recalcitrant minority" of shippers were assiduous in their tactics of evasion of all shipment control measures.[27] Some of the members of the control committee themselves failed to observe the terms of the agreement, and there were sharp differences of opinion within the committee as to the course of action to be followed.

The result was that, from early in 1934 forward, the effectiveness of the agreement rapidly waned, and by June there was strong sentiment for its abandonment.[28] On the other hand, it was quite generally admitted that prices received for fruit had advanced about 35 cents per package as compared with the previous year. Since total shipments amounted to approximately 30 million packages, this meant an improvement of income of some 10 million dollars for the district.[29] While undoubtedly this improvement had been due in part to the re-opening of the export market after dollar devaluation and to other factors in the general economic situation, the majority sentiment leaned to the view that the marketing agreement constituted a distinctly helpful device. It was therefore decided to continue the agreement in the 1934 season, with certain proposed amendments. These would eliminate proration and place chief reliance on the wide dissemination of daily reports as to shipments and prices based on the United States Bureau of Agricultural Economics *Market News Service.* They would also change the method of selection of the control committee. It was originally provided that 25 members of this committee should be selected by the NFI and additional members elected by the "independents" to a number which bore the same proportion to 25 as the tonnage of fruit shipped by these independents during the preceding season bore to the volume shipped by members of the NFI. The proposed amendment provides that all members of the control committee be selected by districts at a general election in which all licensees cast votes in proportion to the volume of tonnage handled by each.

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[27] On Jan. 25, 1934 officials of the AAA issued an order against four alleged violators of the agreement, who were charged with selling apples at prices below minima set by the commodity committee, to show cause why their licenses should not be suspended or revoked. It was also claimed that one of these firms failed to make reports on quantities handled and prices paid and had refused to allow representatives of the Secretary of Agriculture to examine its books and records as stipulated in the license. On May 3 a hearing was held in connection with another violation, and on November 17 on five more. On April 12 orders were issued suspending the license of three of these violators for a period of six months. The suspension order, however, was to be stayed on the condition that the dealers would in future adhere to the terms and conditions of the license.

[28] In fact, the control committee, meeting in Yakima on June 7, voted to recommend its cancellation and the drafting of separate agreements for such branches of the industry as desired them.

By January 1935, however, there was a virtual breakdown in the Northwest deciduous tree fruit agreement. It has not operated in any effective way on crops of the 1934 season and prospects are that it will be terminated in the near future before the heavy fall and winter movement of crop takes place. It is possible that in that event a separate new agreement may be drawn up next year covering shipments of fresh prunes.

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[29] Paul A. Sherer, statement before the Agricultural Council of the Pacific Northwest Advisory Board, American Agricultural Service Division, *Proceedings of the Twenty-Seventh Regular Meeting,* Mar. 22–23, 1934, pp. 50–52.

In this chapter and those immediately following, only casual reference is made to control or reform of marketing practices such as handling charges, grading and inspection, and the like. In the interest of simplicity and clarity of treatment discussion of these matters will be deferred until Chapter XIII, where we can take a comparative view of such provisions in all groups of marketing agreements.

CHAPTER VIII

CITRUS MARKETING AGREEMENTS AND NATIONAL STABILIZATION PLANS

In connection with our discussion of fluid milk, rice, tobacco, and several horticultural products, we have already had occasion to refer to co-ordinated distribution programs and common price objectives of geographically separated areas producing the same commodity. We have, however, reserved any extended discussion of the matter for the present chapter because of the fact that the citrus industry is the one in which plans for inter-regional stabilization have been most fully worked out and have indeed achieved the magnitude of a "national stabilization plan." The experience of the citrus fruit industry, which we shall present in this chapter, will serve to illustrate most of the significant aspects and difficulties of inter-regional stabilization plans in general. To this as a framework, we shall add such supplementary comments as seem necessary to bring out the additional or divergent features of co-ordination plans for other commodities.

A marketing agreement "for oranges and grapefruit grown in the states of California and Arizona" and another "for citrus fruits[1] grown in the state of Florida" became effective on December 14, 1933, with one "for oranges and grapefruit grown in the state of Texas" following on December 26 (all accompanied by licenses), and one "for citrus fruit grown in the Island of Puerto Rico" tentatively approved on October 5, 1934. Inasmuch as all these agreements follow closely the same general pattern and are of the proration type with which we are already familiar, our discussion may be brief except as it relates to the distinctive section which sets forth the national stabilization plan.

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[1] That is, oranges, grapefruit, and tangerines; limes, lemons, and satsumas are excluded.

CITRUS PRORATION IN CALIFORNIA, TEXAS, AND FLORIDA

With the dominant position occupied by co-operative associations in the California citrus industry and their long experience in citrus fruit marketing, it was a comparatively simple matter to prepare a marketing agreement for shippers in California and the adjacent area of Arizona. The agreement became effective on December 14, 1933 and was followed by a license effective on December 18. Instead of a control committee, this agreement provides for a distribution committee and a growers' advisory committee to direct any proration undertakings:

> Whenever the distribution committee shall deem a proration of shipments advisable because of prevailing market conditions, it shall determine the weekly shipments of each variety of fruit grown in California and Arizona. For the purpose of such proration, the said committee may divide the markets into two areas, one area to include such parts of California, Arizona, and Nevada as the committee may determine are in such proximity to the areas of production as to require special treatment, and the other area to include the balance of the United States and Canada; and the committee may establish separate prorates for each such area.

Each shipper receives from the distribution committee his quota of the total shipments to be made during any proration period. Likewise any grower producing fruit not controlled by a particular shipper may request a prorate allotment and this, as well as the shipper's allotment, is determined by the "growers' advisory committee." Separate prorate bases are to be established for navel and Valencia oranges and for grapefruit. It is left to the various shippers to divide their allocations equitably among the growers whom they serve "or would reasonably be expected to serve if the entire crop of all growers were marketed."

The Texas agreement (effective December 26, 1933) is essentially similar to the California agreement. It has a single control committee instead of the distribution and growers' advisory committees used in California. Weekly prorations may be made not only according to variety but also according to grade and size of fruit. Except in emergency, 36 hours' notice must be given to the industry through the press before instituting proration. Shippers receive allotments covering the fruit controlled by them and growers whose fruit is not thus controlled may secure individual prorate bases from the committee.[2] As a matter of convenience in adjusting current operations, all of the citrus agreements provide that shippers may exchange allotments but no shipper may during the total time covered by all the proration periods in a given year ship more fruit of any variety than his total allotment of that variety.

The Florida agreement, which became effective the same day as the one for California, embodied proration provisions identical with those of the Texas agreement. Like the Texas agreement, it was placed under the administration of a single committee. But, whereas the Texas control committee consisted of seven members, only one of whom was designated as a grower, the Florida control committee consisted of thirteen members, four of whom were to be

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[2] By amendment effective Oct. 21, 1934 the control committee is to issue certificates to each grower covering the estimated number of boxes of fruit which he produces. Such grower certificates must be shown by the shipper as evidence of the volume of fruit which he controls and are the basis of the shipper's allotment made to him by the control committee.

"growers of fruit who are in no way financially interested in any marketing or packing organization other than a co-operative, whether as a stockholder, officer, employer, or in any other way whatsoever." As the result of difficulties in operating the original Florida citrus marketing agreement during 1934, it was superseded by a new agreement tentatively approved on October 17, 1934.[3] This changed the basis of control committee membership to six shippers and seven growers. Furthermore, the new agreement specified the geographic district from which each grower member should be chosen and which he was regarded as representing.

This was part of a general shift in the new agreements toward more active grower participation, made possible under the amendments of April 7, 1934 to the Agricultural Adjustment Act. Unlike all previous marketing agreements (whose parties are the "contracting shippers of [the commodity] and the Secretary of Agriculture of the United States"), the new Florida agreement was between growers, shippers, and the Secretary.[4] Certificates were issued to growers, and shippers might ship only such fruit as was covered by these certificates. Thus, if a majority of growers wished a marketing agreement, they were put in a position to secure it even if the number of shippers opposed to it would have been sufficient to prevent its adoption.

A distinctive feature of the Florida agreement was found in the provision which it made for proration to the auction markets. The reason for this provision grew out of Florida's special transportation situation. Even though the volume of supplies as a whole is being kept in satisfactory adjustment to total market needs, the simultaneous arrival of several boatloads of fruit at a given Eastern market, particularly New York, may, in the absence of some supplementary control, result in a sharp depression of this market for a few days, thus exerting an adverse effect on all other markets whose prices are linked more or less closely to New York quotations. Likewise, it is felt that such a forcing down of prices, even for a few days, creates in the minds of traders a new picture of values from which it is difficult to effect a restoration of the previous price level even after the flood of supplies has receded.

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[3] The old agreement and license were terminated by order of the Secretary of Agriculture on Aug. 13, 1934.

[4] This is true also of the tentative Puerto Rico agreement. The growers' advisory committee in California accomplishes much the same purpose.

On the other hand, it is possible that if auction prorates were introduced without any control of total volume, supplies withheld from a limited number of market centers where auctions are employed would be diverted to the non-auction markets in disproportionate abundance, with a highly unsettling effect on prices.[5] Hence it was provided that auction prorates would be undertaken only when volume prorates were also in operation, except that with the special authorization of the Secretary they might be undertaken at other times.

Both the California and the Florida agreements were put in operation promptly after their approval by the Secretary. Proration of shipments was begun in California about the middle of January and was continued consistently throughout the year. "With a few minor exceptions, the California-Arizona marketing agreement was wholeheartedly supported by all shippers during its first year of operation, with the consequence that the program proved of material value to all growers. Not the least of its benefits has been the spirit of harmony and co-operation developed in its practical operation involving all types of shippers."[6] Its second year of operation was less harmonious and it is now proposed to develop a new agreement under the amended act.

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[5] "In addition, an auction prorate directly affects trade relationships, and cannot take into account the changeable character of such relationships. There is often reasonable ground for complaint on this account. A shipper, because of his relationship with a wholesale receiver, may have sold a large number of cars in Chicago last season. This year this connection may be discontinued, and the shipper may make similar arrangements with wholesalers in Philadelphia and New York. His past performance under an auction prorate may permit him to make heavy shipments to Chicago and not allow him to ship a sufficient number of cars to New York and Philadelphia to enable him to carry out his agreements. It appears desirable, therefore, to use the auction prorate as an adjunct to a volume prorate and only in emergencies to prevent congestion in the larger markets." A. W. McKay, paper delivered at the annual meeting of the American Farm Economic Association, Chicago, Dec. 28, 1934.

No proration of shipments was instituted under the Texas agreement until December 13, 1934[7] owing to the fact that a hurricane in the fall of 1933 had almost completely destroyed the 1934 citrus crop of this area. The proration begun on December 13 was discontinued before the end of the week and not resumed until January 20, 1935, when it was undertaken for a period of four weeks largely as an experiment to see how the plan would operate and what difficulties it would encounter. The results were not very satisfactory. There are a large number of very small shippers in this territory and, after the first week, violations were numerous and no effective means of enforcement were forthcoming. With the situation complicated by litigation the agreement broke down before the end of the season.

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[6] *Annual Report of the General Manager of the California Fruit Growers' Exchange,* 1934, p. 8. This report also states that "all of the fruit of merchantable quality was sold during the season, the balance being utilized through the by-product companies or distributed to charitable and relief organizations so that none of the crop was wasted."

Mr. McKay, who was in charge of citrus fruit in the Special Crops Section of the AAA, said (in the paper mentioned above): "There is plenty of evidence that the operation of the agreements in California and Florida last season resulted in increased returns, aggregating several million dollars, to the growers of those states."

[7] The control committee had, however, prohibited the shipment of unclassified fruit effective Oct. 28, 1934.

Florida began proration operations about the same time as California, but after a few weeks they were interrupted by an injunction brought in the Federal District Court on the grounds that the Agricultural Adjustment Act was unconstitutional. The Appellate Court set aside the injunction and ultimately reversed the decision of the lower court, but it was not until the latter part of February that the Florida agreement could be brought back into operation. Further interruptions came from disagreements among the shippers in July, and the agreement was terminated on August 13, 1934. After lengthy discussion and considerable friction [8] a new agreement was developed for the Florida citrus industry, and made effective December 18. The new agreement gave seven memberships on the control committee to growers and six to shippers. Under the proration plan allotments to shippers were based on the quantity of fruit controlled by them in the current shipping season as evidenced by growers' certificates or by their "past performance" record of fruit shipped, whichever figure was higher.

Owing to the reduction of the citrus crop as a result of the severe freezes in December 1934, no proration of shipments or regulation of grades and sizes[9] was ordered and it was even considered advisable to remove the requirement contained in Article V of the license, providing that all fruit shipped from Florida by licensees be graded and certified in conformity with standards of the United States Department of Agriculture. During the suspension of this clause (effective February 22, 1935) the use of inspection was made voluntary on the part of the shipper.

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[8] The difficulties encountered in trying to get Florida citrus shippers together on an agreement during this period prompted the AAA to launch a flank attack on the problem through a move to secure direct producer support of a marketing plan. Under the amendments of Apr. 7, 1934 to the Adjustment Act it became possible to make producers parties to marketing agreements. In response to requests of growers, more than 15,000 copies of the tentatively approved marketing agreement were circulated in the state. These were signed by growers quite generally and promptly with the result that the agreement became effective on Dec. 18, 1934.

By this time the new agreement had practically become a dead letter. In the session of the state legislature which opened on April 1, numerous bills relating to the regulation of the citrus industry were introduced, and nine such acts were passed. The most important provision was the creation of a state citrus commission. On July 15 the marketing agreement was terminated.

NATIONAL STABILIZATION OF THE CITRUS MARKET

"In order to co-ordinate the efforts of all shippers shipping oranges and grapefruit," all the regional marketing agreements included a national stabilization plan. This provides for a national citrus stabilization committee for oranges, a similar committee for grapefruit, and a national citrus co-ordinator. The stabilization committee for oranges would consist of four representatives each from California and Florida, and one each from Arizona, Texas, and Puerto Rico, whereas the stabilization committee for grapefruit would consist of four representatives from Florida, three from Texas (only one member prior to August 1, 1934), and one each from California, Arizona, and Puerto Rico.

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[9] *AAA Press Release No. 1595–35.*

This agreement provided that growers whose product fell largely in excluded grades or sizes might secure exemption from this restriction on any variety of fruit of which two thirds of the crop had been shipped.

It is left to the control committee of any state operating under a marketing agreement with its national stabilization provision to petition either of the national stabilization committees when, in the judgment of the state control committee, some national co-ordination effort is called for. The national committee shall thereupon consider and decide whether market conditions with reference to the given commodity are such as to require a national proration of shipments. If, upon investigation, it decides that there is such a need, it may, with the approval of the Secretary of Agriculture, "limit the quantity of each variety of oranges or grapefruit which may be shipped for any period or periods to continental United States and Canada in the current of interstate and foreign commerce." After deciding upon such a limitation of the volume of shipments, the committee shall allocate this amount among the several regions participating in the national stabilization plan.

If the stabilization committee should be unable to agree upon the formula for such allocation, the issue shall be referred to the national citrus co-ordinator. This officer shall be appointed by the two national stabilization committees with the approval of the Secretary of Agriculture, and it shall be his duty to attend all meetings of both national committees and local control committees and to facilitate their work in every way possible. He is to act as representative of the Secretary and to be charged with the performance of any functions requested of him by either of the national committees.

While the national stabilization scheme never got beyond the stage of a paper plan, its purpose and the underlying marketing philosophy which caused it to be included in these four citrus marketing agreements should be set forth if we are to get an adequate understanding of the whole marketing agreement undertaking. Such an understanding involves a bit of historical analysis of the co-operative movement as it has evolved among growers of citrus fruit.

Co-operative effort in California dates back to the 80's and the present central exchange had its inception before the close of the last century. As it has evolved, it has coordinated the marketing efforts of some 200 local packing houses through district exchanges into a federated central exchange which handles more than 75 per cent of the oranges and 90 per cent of the lemons in California. Besides this volume in the hands of the California Fruit Growers' Exchange, an additional 10 per cent is handled by another co-operative—the Mutual Orange Distributors. With so large a percentage of shipments under co-operative control, it has been possible to develop and well-nigh perfect a scheme of systematized merchandising of the product which has given to the officers who direct the task of distribution a continuous picture of their marketable supplies, the movement of the fruit along the channels which lead to the various markets, and the conditions in these markets. Through its elaborate distributive mechanism, the exchange has not merely sought to direct its shipments toward the most favorable (or least unfavorable) market which could be found at a given time but has developed the philosophy that it is bad business to incur shipping or even harvesting charges on fruit which does not show a reasonable prospect of meeting with a remunerative demand after it is put on the consumer market.

Therefore, while pressing aggressively for the expansion and development of every market outlet possible, the exchange has sought also to develop measures for the protection of its shippers through the deferring or complete withholding of supplies when no demand could be found which would pay handling charges and some return at least to the more efficient growers. This led to the undertaking of proration operations as early as 1923.[10] Finding the price situation as to lemons at that time disastrous to its members, the exchange set up a "distribution committee" under authority of resolutions adopted by local growers' associations, which represented approximately 80 per cent of the lemon shipments handled by the central exchange. This distribution committee determined the volume of fruit to be shipped each week and prorated it in turn among the several shipping associations. As the shipping season advanced, the excessive crop and low prices made it impossible to produce results under this informal arrangement. Accordingly, a legal contract was drawn up and signed by associations representing over 95 per cent of the exchange lemon business. Since exchange shippers controlled about 93 per cent of the entire lemon crop, this made the proration agreement a practically complete shipping control. It has continued to the present time and been implemented by the erection of by-product plants to which lemons withheld from the fresh fruit market are sent for conversion into by-products, such as citric acid, pectin, lemon oil, and citrate of lime.

In spite of the fact that the small percentage of lemon shippers outside this co-operative stabilization plan at times seriously interfered with the smooth working of its controls, the California citrus interests appeared to be content to leave the lemon industry on a basis of local autonomy, without resort to a marketing agreement under the Agricultural Adjustment Administration.[11] The degree of co-operative control over oranges and grapefruit, however, is much less, and outside competition is very keen. Whereas California is the only lemon-producing territory of any importance, Florida practically matches it as a shipper of oranges during several winter months and far overshadows it in grapefruit production. In grapefruit production, the Texas area has also been expanding rapidly during recent years and promises to rival Florida in the not distant future. It was evident, therefore, that if any such control of the orange and grapefruit market were to be brought about, as had already been effected in the lemon market by the California Fruit Growers' Exchange, joint action from all the producing areas would be required.

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[10] C. C. Teague, "California Proration Plans for Fruits and Vegetables," *American Co-operation,* 1933, p. 357.

Past progress in the organization of marketing effort in these other areas has by no means paralleled that of California. Co-operative effort in Florida, though by no means absent, has never succeeded in drawing together into a single integrated effort anything like so large a percentage of the crop as have the co-operative organizations in California. In part this is due to the fact that they have not had the good fortune to receive the extraordinary leadership which has been found in the California movement. In part also, their difficulties are due to the extreme rapidity with which acreage and production have expanded, particularly in grapefruit groves. But a still further difficulty has grown out of their geographical location as affected by recent transportation developments.

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[11] Although the voluntary lemon agreement of the California Fruit Growers' Exchange had operated successfully, the exchange was considerably bothered by the fact that those outside the agreement shipped all their lemons under the protection afforded by the by-product disposal plan. Since the total surplus had averaged 20 per cent of the crop during the past five years, it was felt that all growers should bear their proportionate share of the burden. Hence the California Fruit Growers' Exchange Board on Jan. 23, 1935, in response to grower demand, voted that the arrangement be broadened to include the whole industry under the provisions of the California Agricultural Prorate Act. (*California Citrograph,* March 1935, pp. 127-28.) This move was promptly attacked by the independent shippers and the Mutual Orange Distributors, with the result that the state prorate act was declared unconstitutional.

The history of the co-operative movement in many lands shows that difficulties of effective organization increase in direct ratio to nearness of the producing territory to the market and ease of transportation and commercial contacts. The Florida citrus area is much closer than is California to the great consuming markets of the Northeast, and the development of cheap water transportation to Baltimore, Philadelphia, New York, and Boston during recent years, and particularly the growth of truck transportation, have made it easy for small growers to find sales outlets without maintaining a permanent connection with any established distributive association—co-operative or other. In fact, the multiplicity of cash buyers constantly seeking to make purchases at the groves has made it difficult to maintain any large or effective co-operative organization. In spite of repeated attempts, such organization in Florida has never covered more than 50 per cent of the crop and has ordinarily been at about its present level of 30 per cent.

Citrus producers hoped that the Florida marketing agreement might be productive of beneficial results in the market by bringing all shipments under one unified control. The same may be said of the Texas area. This is a relatively new producing territory where co-operative organization has not acquired either great size or ripe experience. If the regional agreements for Florida and Texas provide a machinery through which all shippers in the given territory seek to equalize their shipments as between the several markets and from week to week during the shipping season, this should greatly lessen the inequalities in market flows which have resulted in gluts and shortages. It would perhaps be as far as market organization need go with reference to shipping periods during which a single area is the sole or dominant source of supply or with reference to those markets which are solely or dominantly dependent on a certain producing area.

But as for times at which and markets in which two or three producing areas are important competitors, it is highly important from the standpoint of suppliers that those who plan and direct shipments from one area shall know the rate and timing according to which other suppliers will be directing fruit to the various markets. If it appears that this will overload certain markets or cause excessive supplies at certain times, and if even the greatest possible amount of readjustment of distribution and timing does not give reasonable hope of avoiding disastrous prices for some part of this supply, the same logic which suggests proration within a given shipping territory argues for proration among the several alternative sources of supply for the markets of the nation. It was the hope of securing such co-ordination, co-extensive with the whole spread of the citrus industry in the United States, which led to the inclusion of the national stabilization plan in all the citrus marketing agreements.

It is obvious that the devising of any formula for prorating shipments among districts is an extremely difficult task, since both old and new sections are involved and since any section may in a given year or series of years be subjected to sharp fluctuations of production as the result of weather conditions. Although the national stabilization committees held two meetings for the discussion of the principles which should govern their work and the consideration of persons suitable for the post of national co-ordinator, no national proration was embarked upon. The quota which would be appropriate for Texas, already difficult of determination because of the relatively immature stage of her development as a producer of citrus fruits, was further complicated by the hurricane of 1933. Florida's problem with reference to 1935 was made controversial by reason of the reduction of yields as a result of the freeze in December 1934.

Furthermore, the difficulty of selecting a co-ordinator adequate to his task and satisfactory to the various interested parties is extremely great. The acuteness of the personal issues injected into the selection of the second Florida control committee, together with the fact that alleged ambitions to become co-ordinator were also present in that situation, sheds light on the difficulty not merely of making an initial selection of a national citrus co-ordinator but also of giving effect to his decisions and attaining enough permanency to accomplish any significant result. Had the Florida and Texas agreements been put on a successful operating basis, it still is quite conceivable that even had no national proration effort been undertaken nor a co-ordinator appointed, the mere setting up of the two national stabilization committees and their occasional meeting for the discussion of problems of the industry as a whole might have resulted in the effecting of better understanding and harmony between the several regions, with some resultant informal co-ordination of merchandising effort.[12]

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[12] C. C. Teague, president of the California Fruit Growers' Exchange, after a visit to Florida during January 1935 for the purpose of studying the citrus situation reported to his board of directors: "The leaders have little conception of the co-operative movement as we understand it here. The industry is in the hands of commercial operators. There are over 150 shippers, not

This is the most elaborate of the national stabilization schemes which have been proposed. The same general idea, however, is present in a majority of the other marketing agreements covering general crops[13] except those which relate to commodities whose area of production is purely local or sectional, such as Tokay grapes, California dates, ripe olives, and canning cling peaches. In the case of walnuts, one agreement covers both the major producing section in California and the minor section in Oregon and Washington under a single co-ordinated plan. The Florida celery agreement (Article VI, Section 4-g) authorizes the control committee "to negotiate and confer with representatives of shippers of celery produced in areas outside the state of Florida with regard to the formulation of a marketing agreement for the proration of shipments as between the several areas in the United States where celery is grown," and to enter into such an agreement, which will be binding on the shippers when approved by at least 75 per cent of the control committee and by the Secretary of Agriculture. The Florida strawberry agreement has an almost identical provision. The Gravenstein apple, Washington vegetable, and California fresh asparagus agreements authorize the control committee to negotiate with representatives of other areas with reference to the formula-

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counting innumerable truck operators who buy from growers and packers. Their major interest is in making a profit from packing and shipping, and of course they sometimes make profits even when growers do not. . . . There is little immediate hope for effective co-operation from Florida shippers in distribution, either among themselves or with California." *California Citrograph,* March 1935, p. 128.

[13] Likewise there was a clause in the California rice agreement providing for co-ordination of activities with those of the Southern rice industry, and the peanut agreement was industry wide, covering three producing sections from Virginia to Texas. In a later chapter also we shall see that the two dairy product agreements were national in scope, and there were traces of the intermarket co-ordination idea in some of the fluid milk agreements.

tion of a joint proration plan but do not bind the signatories to accept such an agreement.[14]

A similar provision was found in the potato marketing agreement for the Eastern states and that proposed for the Southwest. The extreme difficulty, however, of arriving at a proration between sections on a basis of voluntary agreement may be taken as one of the reasons why potato interests moved for a production control measure of the Kerr-Smith type, where the responsibility for interregional proration is thrown upon the officials of the Adjustment Administration. When proposed marketing agreements for canners of tomatoes, corn, and peas were under negotiation, difficulties in arriving at any basis of proration among producing regions caused the effort to be abandoned.[15] All in all, therefore, it seems extremely doubtful that any "national stabilization plan" can be realized until several years of peaceful and effective operation of a marketing agreement in each of the constituent territories have been achieved.

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[14] The possible ramifications of the co-ordination idea are well illustrated by Bartlett pears, for which there are important commercial producing areas both in California and the Pacific Northwest, besides minor local production elsewhere. This product may be sold in the fresh fruit market or canned for year-round distribution. In the latter form, it is more or less competitive with winter pears, which through cold storage have a long marketing season, as well as competing with other canned fruits. Although several attempts were made, no practicable plan of co-ordination to govern such a situation was evolved under the California and Northwest deciduous tree fruit agreements or between canners and the shippers of fresh fruit.

[15] There was also an elaborate plan for dry edible beans, embracing five marketing agreements covering all important bean-growing regions from New York to California. These provided for a "national co-ordinating board" of ten members—one grower and one dealer appointed by each regional "industry board." The co-ordinating board was to maintain a permanent secretariat and to act as a board of review as to minimum price schedules proposed by the several industry boards. Its action, however, was to be subject to the approval of the Secretary. Thus far it has proved impossible to get the various districts to accept the proposed agreements, and the AAA thinks it futile to attempt operations unless all are included.

CHAPTER IX

CANNING CROPS, DRIED FRUITS, AND NUTS

In the two preceding chapters we have been discussing fruits and vegetables of a perishable nature, surpluses of which can be dealt with on the basis of brief suspensions of shipments or, at the most, limitation through the control of current marketings. In the present chapter we shall deal with products of a less perishable character, where control devices must take into account the possibility of holding the product in storage and perhaps carrying it over into the subsequent year or even longer. The difference in the economic and technical problems involved is of course one of degree rather than kind, and many of the control procedures are similar to those with which we are already familiar. Marketing agreements in this field, however, have laid considerably more stress on the setting of minimum prices. Because of the storable character of the product it is possible to hold any surplus not salable at the fixed price level until conditions improve or, if necessary, the price policy can be readjusted.

THE CLING PEACH CANNERS' AGREEMENT

The second marketing agreement to be put into effect under the Agricultural Adjustment Act was that for canners of cling peaches grown in the state of California. It was antedated only by the milk agreement for the Chicago market. It is of interest not alone because of its early date and significance as something of a model for the form of agreement to be used, but also because this agreement was made the test of the possibility of enforcing similar undertakings.

Growers and processors of California canning peaches found themselves in a serious situation as they faced the operating season of 1933. Market conditions in 1932 had been so bad that barely half the crop of peaches had been harvested, and for these the growers had received only about $6.50 per ton, whereas the estimated cost of picking and delivering to the plant was approximately $5.00 per ton. This was simply the culmination of several bad years. Informal efforts at control in 1930 and 1931 had shown partial success and both growers and canners were eager to see if something decisive could not be done under the new act to remedy the situation in their industry.

Official estimates placed the probable 1933 crop of No. 1 peaches at 284,000 tons. Persons conversant with the situation believed that if no restrictions were placed on the marketing of this crop, prices would fall to as low a point as they had reached the previous season, demoralizing the market and in all probability resulting in a large part of the crop not being harvested. They argued, however, that if a definite limit of something like 10 million cases were set on the pack (a 50 per cent increase over that of the previous season), this supply could be disposed of at a price which would enable canners to pay producers a price of $22.50 per ton "harvested basis."[1] After a period of informal discussions a public hearing was held in Washington on July 31, 1933 at which a proposed marketing agreement was presented. This agreement provided for a limitation of the total pack of cling peaches in the season of 1933 to 218,000 tons of No. 1 cling peaches, or a total pack not to exceed 10 million cases.

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[1] *AAA Press Release No. 198–34.*

As the agreement was finally drawn, the size of the permitted pack was limited to this amount and the price per ton set at $20. It was provided that each canner should pay into a surplus crop fund the sum of $2.50 for each ton of peaches purchased by him. This fund was to be used to pay growers for fruit not taken by the canners, the rate to be $15 per ton[2]—the equivalent of the price paid for peaches actually canned, allowing for harvesting costs estimated at $5.00 per ton. This agreement was put in final form as rapidly as possible after the hearing, which closed on August 1, was hurried back to California for signing by the processors, and was approved by the Secretary of Agriculture on August 16. Of the 56 concerns in the industry, about 40 had signed at the time the Secretary gave his approval, but a few were known to be irrevocably opposed to the agreement. On August 17 all processors were brought under its terms through the use of the licensing power.

Administratively, the agreement was not essentially different from others which we have discussed. There was set up a control committee consisting of eight representatives of canning interests, one representative of the state Farm Bureau Federation, and one member representing the consuming public. Along with the control committee there was a crop estimating committee consisting of one representative each from the Farm Bureau Federation, the California Canning Cling Peach Growers' Association, the Canners' League of California, and the independent canners. Finally, there was a board of allocation, to be designated by the Secretary of Agriculture. The crop estimating committee was at once to undertake a survey and estimate of the total crop, which was to be reported to the Secretary of Agriculture and to the allocation board. Should this estimate show that the total crop of No. 1 cling peaches exceeded "the amount necessary to pack 10 million cases, the allocation board shall allot to each canner from the agreed maximum pack of 10 million cases the maximum number of cases which each canner may pack." This allotment was to be "predicated . . . upon previous sales record, demonstrated potential sales ability, and outstanding contractual commitments." To determine the amount of payments to be made to growers for peaches in excess of the total quota of 218,000 tons, the control committee was to appoint field committees for the purpose of appraising the tonnage of each orchard.

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[2] If canners' payments of $2.50 per ton failed to provide adequate funds for this purpose, an additional assessment was to be made.

"In order to stabilize the market for canned peaches so that canners may be able to meet their contractual obligations to growers," there was set up a schedule of maximum and minimum prices at which the canned product (classified under 21 items) could be sold. These prices were subject to change by the Secretary of Agriculture upon his own initiative or on the recommendation of the control committee. Each canner was required to publish and file with the committee his opening prices for the 1933 pack (within the prescribed maximum and minimum range) and these were to be increased in accordance with any subsequent advances which the Secretary might make in the original schedule of maximum and minimum prices included in the agreement. In case of such increases the canner was to pay 25 per cent of such increased price on subsequent sales into a "price increase fund." Any canner who decreased his prices in accordance with the decrease in maximum and minimum prices promulgated by the Secretary might claim a credit of 25 per cent of such decrease from the price-increase fund, any residue in the fund at the end of the season to be returned pro rata to growers on the basis of unharvested No. 1 peaches as well as those delivered to canners.[3]

In spite of the efforts made to get this agreement promptly into effect, the operating season was well under way by the time it was finally approved and the license issued. Many canners had made forward sales of their product at prices which would not permit them to pay the growers the rates stipulated in the agreement, and the Adjustment Administration therefore immediately undertook to have all such canners request of their purchasers such a scaling up of prices as would enable them to fulfill the terms of the marketing agreement. Re-enforcing this effort, Mr. Peek on August 31, and again two weeks later, sent letters to the wholesale dealers involved in the situation, asking them to agree to the desired adjustment of prices. In the main these efforts met with success, but one comparatively small co-operative cannery, which had refused to sign the marketing agreement, claiming that the Secretary had no jurisdiction over its operations, alleged that prior contracts with the distributors of fruits prevented it from paying the stipulated prices to growers. Another cannery openly disregarded its license, and a dozen or more of those who had originally declined to sign the agreement showed every intention of evading the terms of their licenses if possible. After some delay a restraining order upon the chief offender was secured and conditions improved but did not become entirely satisfactory.[4]

In spite of these difficulties, the California cling peach agreement was generally regarded as having accomplished the main purposes for which it was intended. Payments to the surplus crop fund were sufficient to pay growers in full for peaches left unharvested under the restriction plan. Early in January the Adjustment Administration estimated total returns to growers as amounting to 5 million dollars, compared with $906,000 in 1932.[5] The crop was reduced by dry weather to slightly less than original estimates but would have been sufficient to make about 12.6 million cases of canned peaches.

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[3] The marketing agreement also contained rather extensive provisions (Article IV) covering terms of sale, allowances, standardization and inspection, classification of customers, unfair competition, and the like. See Chap. XIII.

[4] For further comment on enforcement, see pp. 273, 275.

> . . . Canners applied to the allocation board for a total pack of 13.4 million cases and if no agreement had been in effect, probably would have packed about 13 million cases, obtaining 400,000 cases from No. 2 peaches.
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> If 13 million cases had been canned in 1933, the market for canned peaches, instead of being in a fair position, as it now is, would be utterly demoralized. Severe price cutting would have developed and it is probable that the carry-over on June 1, 1934 would have been increased in spite of the disastrously low prices that would have prevailed.
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> While canners generally will not make much profit on their 1933 pack of peaches, neither are they likely to experience much loss. If the pack had not been limited, canners' selling prices would have been much lower as compared with the cost of canning, even though the prices paid to growers for raw fruit had been much lower than they were under the agreement. Consequently, without an agreement, canners would have lost considerable money on their peach operations in 1933.[6]

The carry-over on June 1, 1934 was somewhat above normal, and canners and growers were already at work on a new marketing agreement for the 1934 season. Changes introduced in the new agreement were designed to simplify the machinery of control and at the same time to make it more effective by dealing with surplus at the source. Instead of assigning quotas to the canners, a producers' prorate was provided. After the control committee had by survey determined the probable size of the total crop and the market outlook as based on the general price level, the buying power of consumers, and the competition from other products, it was to determine and announce the "total tonnage that may be canned." This total tonnage was then to be prorated to each individual orchard on the basis of an appraisal of each orchard by two appraisers, one of whom must be a grower of cling peaches. The quota thus prorated to the grower was his "deliverable tonnage for canning," and the control committee issued him a certificate for this volume of product. No canner could receive any cling peaches except such as were accompanied by such certificates.[7] Subject to this limitation the canner was free to buy and can peaches in such amount as he might be able to purchase them in competition with other canners and without contribution to any adjustment fund. As a check upon his output, however, it was provided that he must not produce a pack of more than "48 cases No. 2½ cans or the equivalent thereof per ton." For any excess he was required to pay to the control committee liquidated damages ranging from 20 cents per case on excess of two cases per ton to $2.00 per case on an excess of more than ten.

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[5] *AAA Press Release No. 1527–34.* Later stated as an increased return of $2,750,000. *AAA Press Release No. 2584–34.*

[6] The same, p. 3.

This agreement went into effect on July 6 after being signed by canners representing 86 per cent of the industry and was made binding on all by a license effective July 12.[8]

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[7] This was one of several important recent developments in the use of growers' certificates as an operating device. It is designed to prevent favoritism among producers on the part of processors or distributors.

[8] *AAA Press Release No. 74–35.*

The 1934 canning peach agreement was regarded as even more successful than that of 1933, at least as far as the grower was concerned. Under its simplified provisions the problem of compliance was in large part met, although one large canning concern which had signed the agreement sought to surrender its license and enjoin the Secretary from holding it to compliance with its terms. This complaint against the AAA was dismissed, and the Secretary of Agriculture then proceeded with the regular enforcement proceedings. (See Chapter XIII). The new method by which allotments were made to individual growers led to considerable dissatisfaction as to the manner in which these quotas were arrived at. The making of appraisals of the growing crop on every individual orchard is obviously an arduous and delicate task.

Since this was a one-year agreement, it would expire automatically in the summer of 1935. During the spring, suggestions were forthcoming from grower interests that a new agreement be drafted to take its place.

Packers, however, were less enthusiastic and pointed to what they considered would be two disturbing results of the higher prices in 1933 and 1934. One was the opportunity which this had afforded to pear packers to promote sales of their product and perhaps permanently win way in the market for canning peaches. The other was the possible over-stimulation of plantings of peach trees. On this point, opinion is sharply divided. There can be no question that there was a distinct increase in plantings, but part of it was to be accounted for in terms of deferred maintenance. Obviously the proper rate of replacement depends upon the rate and extent of recovery of general purchasing power and the relative appeal that different products will be able to make to that purchasing power. Hence this issue is interlocked with the previous one with reference to the possible permanent encroachment of canned pears on the market.

In any event, canners as a group decided to ask exemptions from the marketing agreement and licensing features of the Agricultural Adjustment Act (see pages 289, 290n) and, with a few exceptions, such exemption was conferred under the amendments of August 24, 1935. These developments were in large part responsible for the effort to abandon the new peach agreement in 1935, and the amendments now preclude any further activity in this field.

OTHER CANNING CROP AGREEMENTS

Somewhat similar to the cling peach agreement was the agreement for the California ripe olive canning industry which became effective on December 9, 1933. The growing of olives in California had been expanding rapidly during the preceding decade and very much exceeded the capacity of the domestic market to absorb the canned product. As a result more than a third of the crop went to the much less remunerative oil market. The keenness of competition among canners had produced a disastrous price situation in 1932. Growers were therefore anxious to secure some form of stabilization agreement for the 1933-34 season.

The principle upon which such an agreement should be based had been clearly pointed out two years before the passage of the Agricultural Adjustment Act:

> By utilizing a larger proportion of the olives for oil the amount of olives canned could be materially reduced. This would tend to increase the prices of canning olives without causing a decrease in the prices of oil olives because California production of olive oil is such a small part of the national supply. Until the present large

> carry-over is reduced, such a procedure would be of distinct benefit to the industry. It cannot be accomplished, however, unless it is undertaken as an industry program and participated in by all factors in the industry.[9]

The agreement entered into in December 1933 contemplated just such an industry-wide program. It provided a schedule of growers' prices according to the several varieties and sizes binding upon all canners. These prices were computed to average $108 per ton or approximately three times the 1932 rates. For the finished product, also, there was established a scale of minimum prices subject to modification by the Secretary.

For the purposes of carrying out these provisions, a control committee and a crop estimating committee were established and entrusted with the duty of determining each year "the amount of olives of any variety or size which it [the control committee] deems it advisable to pack in the ensuing canning season." The committee assigns canners their respective quotas in this total pack, and after appraising the crop of growing olives in each orchard, allots each grower a "salable tonnage," in such proportion to his available tonnage as will give him an equitable share in the total to be packed. No canner is permitted to purchase, or to accept from any grower, olives in excess of this salable tonnage except with the express permission of the control committee.

This agreement came into force too late to affect the size of the 1933 pack, but the minimum price provisions were regarded as having a favorable effect on returns to packers. Since most of them were co-operative, the benefit was reflected to growers. On October 1, 1934 the Secretary of Agriculture approved the schedule of minimum prices to producers for the coming season and certain changes in the schedule of minimum prices to distributors, but the provisions for control of the size of the pack were not brought into operation. This agreement was considered distinctly beneficial by the interests involved and they secured exemption of their industry from the general exclusion of canning crops from the marketing agreement provisions of the Adjustment Act as amended in 1935. It appears probable that a new ripe olive agreement will shortly be developed with some modifications suggested by past experience.

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[9] H. R. Wellman, "Olives," *University of California Bulletin No. 510*, March 1931, p. 4.

Canners of California asparagus began early in 1934 to consider a marketing agreement for their industry. Owing to the highly perishable character of the product and its habits of growth, the control problem was different and in certain ways simpler than that for other commodities which we have been discussing. After a public hearing on January 20 an agreement was worked out and tentatively approved which embodied the following features. A control committee, after proper study of the market situation,[10] was to name a total pack which might be put up by all canners during the 1934 season. No allocation of this pack among the several canners or the growers was to be undertaken, but April 1 was declared to be the opening date of the packing season, and no plant was to operate prior to that date unless the control committee gave specific permission in order to take care of asparagus suitable for canning but excluded from the fresh asparagus market under the proration arrangement provided for in the marketing agreement for fresh asparagus (see page

[10] This is facilitated by the fact that for this crop, as for many other products grown in the state, the Giannini Foundation of the University of California had already made careful analysis of production conditions and market demand.

136). The control committee was to watch the progress of canning operations and determine the date and hour at which approximately the maximum number of cases set as the total pack had been packed and to announce this date as the closing of the canning period. Such notice was to be given at least three days before the closing time and no canner was permitted to operate thereafter.

When the tentative agreement was returned to the producing territory to be signed by the canners, they objected to its provision with reference to books and records. Though unwilling to abrogate what they considered their rights in this regard, they were ready to operate under a license embodying the same terms. Accordingly, the marketing agreement was dispensed with and the Secretary invoked the broad powers of the licensing section of the act to issue such a license, covering all canners of asparagus, effective on March 6. Results under this license were regarded as satisfactory, although the manner of setting the date for the beginning of the canning season had one important defect. It caused growers to deliver all their asparagus to the canner on and after April 1, in spite of the fact that there was profitable shipping demand for fresh asparagus after that date. As each canner was interested in putting up as many cases as he could before the quota was reached, he would be unwilling to allow any part of the crop of his contract growers to be diverted to this fresh-produce market, even though it would be more remunerative to the grower. Even so, returns to growers averaged 3 cents per pound in 1934, as compared with 1¾ cents in 1933.

In the spring of 1935, growers and canners felt that a marketing agreement which would limit the size of the pack was desirable, but they had divergent views as to method. Eventually an agreement was completed and made effective with a license on April 3. This agreement embodied limitation provisions essentially similar to those of the 1934 agreement. The control committee on April 5 fixed the maximum pack at 2,250,000 cases. The date for opening the packing season had been established in the agreement as March 15 in the Imperial Valley and March 16 elsewhere in the state of California. On June 13, the control committee set eleven o'clock in the morning of June 21 as the close of the canning period. It was estimated that by this time the permitted maximum quota of 2,250,000 cases would have been packed.

In order to avoid the tendency during the early days of the packing season to divert to canning uses asparagus which might otherwise have gone to the fresh asparagus market, it was provided that between March 26 and March 31, inclusive, no canner might take delivery of asparagus from any grower except such as was harvested from acreage in excess of what the grower was permitted to ship as fresh asparagus under proration regulations established by the fresh asparagus marketing agreement. If there were no proration, or one which permitted shipping 75 per cent or more of acreage, then the canner might not take any deliveries during this period. There was a further provision of similar though somewhat more elaborate character covering the period from April 1 through April 15. Owing, however, to the curtailment of the fresh asparagus crop during this period, these provisions were not called into play during 1935, but they illustrate an ingenious attempt to correlate agreements for a product which is sold both fresh and in processed form.

Compliance with this agreement during the 1935 season was satisfactory. Price results also were favorable. Competition developed among the packers, some of whom felt that they had not secured their proper share of the business in 1934, with the result that average prices had pushed up to approximately 3.8 cents per pound—about a half cent per pound over the 1934 average.[11] The pack of 1935 was more than 10 per cent larger than that of 1934, so growers' incomes were distinctly improved. Since the price of 1934 had resulted in a report of "intentions to plant" which were generally regarded as excessive, there was some fear that the long-run effects of the agreement might be harmful. The Adjustment Administration has warned the industry of this danger.[12] However, actual plantings were only about one-third the reported "intentions."

Besides these three control schemes that have actually been put in operation, five other marketing agreements for canned products have been proposed. We have already referred to the proposed marketing agreement for Pacific Northwest Bartlett pears (page 142) which provided for a season's prorate of canning pears to canners and to growers respectively in conjunction with a prorate of shipments of fresh pears. Though tentatively approved on July 7, 1934, it did not meet with sufficient favor to be made effective.

Canners of sour cherries were struggling with a heavy carry-over of stock in storage during the winter of 1933-34. Competition had forced prices to extremely low levels, and canners hoped to be able to work out an agreement by which a schedule of minimum prices could be put into effect and by license made binding upon all canners. The tentative agreement also provided that the executive committee should "open negotiations and confer with other branches of the cherry industry . . . to the end that a marketing agreement embracing the entire cherry industry and controlling the production, packing, marketing, and distribution of cherries may be entered into with respect to the 1934 and subsequent crops." It proved impossible, however, to get a sufficient number of canners to support this agreement and, though tentatively approved by the Secretary on February 27, 1934, it never became effective.

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[11] These figures and other material presented in this discussion are drawn from a special report prepared by R. H. McDrew, marketing specialist, General Crops Section, AAA.

[12] *AAA Press Release No. 1890-35.*

Three other proposals were made covering important vegetable canning crops. Before discussing them, however, a few words should be said concerning informal understandings under which canners had co-operated in advancing prices during the 1933 season. Within a few weeks after the Adjustment Administration got into operation it began receiving appeals from growers of canning crop tomatoes who felt that a revision of the prices at which they had contracted to furnish tomatoes to the canners should be made. Their argument was based on higher harvesting and other costs as a result of the higher wage levels and increasing costs of materials. In response to these requests, Coadministrator Brand sent a series of telegrams between August 3 and 11 to tomato-canning companies and officials of the various state canning associations, requesting that they increase by 25 per cent the prices which they had contracted to pay growers. He pointed out that, while such a revision of prices would be vital to farmers' prosperity, it would involve a difference of less than one cent per can to consumers. A generally favorable response to these requests was secured and contract prices for sweet corn, lima beans, beets, and cabbage for kraut, as well as tomatoes, were covered by the readjustments.[13] The pea canning season was already over and the pear canning season on the Pacific Coast so far advanced that no general raising of prices there could be brought about by such a short-cut procedure.

Early in 1934 efforts were begun[14] to effect marketing agreements for the principal varieties of canning vegetables which would strengthen and make permanent the undertakings begun in the midst of the 1933 operating season. Hearings on proposals covering the canning of sweet corn, of peas, and of tomatoes and tomato products were held on February 15 and 19 and on March 3 respectively. These proposals included a guaranteed scale of minimum prices to growers,[15] according to type of product and the district in which the cannery was located, and a limitation of the total pack under a system of district quotas based on the average volume packed during the preceding six years. Any product in excess of the allocated quotas was to be impounded until July 15, 1935. In the hearings considerable objection to this method of attempting to limit the total product was apparent, some arguing that even though impounded, any excess would have a proportionately depressing effect on prices; some attacking very vigorously the equitableness of the apportionment; and others holding that the stipulation of minimum growers' prices would of itself impose a sufficient check on packing operations. As a result, the scheme of allocation among districts and the assigning of quotas to canners was dropped, and the agreements provided simply for systems of minimum prices to growers.

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[13] Supplementing its efforts with the canners, the Administration also approached wholesale buyers, chain stores, and others who held forward contracts with the canners, urging them to accept a revision of prices compatible with that being made by the processors. Here again a large measure of coöperation was secured and the Adjustment Administration followed the matter up through efforts to see that all price advances were passed forward to the consumer without pyramiding and passed back to the growers without deduction. In August severe storms visited the Atlantic Coast producing section and some growers were inclined to violate their contracts and hold for higher prices than those to which they were entitled under the adjusted scale. In this situation, the AAA used its influence to persuade growers to live up to the letter of their contracts.

[14] At the annual convention of the National Canners' Association in Chicago January 17–19, the matter was discussed and committees appointed covering peas, corn, and other canning crops.

[15] In the case of corn the 1934 price was to be at least 40 per cent above that paid in 1933 on varieties for which the price was less than $7.00 per ton and 35 per cent higher on varieties for which $7.00 or more had been paid in 1933. For peas, the canners were to pay at least $6.50 more per ton for shelled peas than the prices paid the previous year. This would bring prices to approximate parity of purchasing power as compared with prices during the 1909–14 base period set up in the act. The advance amounted to about 15 per cent. On tomatoes the increase was $2.25 per ton above 1933 contract rates prior to the voluntary adjustments made at the request of the AAA. This $2.25 advance applied to "flat price" buying; when buying was by grades, differential adjustments were permitted but advances had to average not less than the flat rate.

In this form, the corn and pea marketing agreements were tentatively approved on March 14, and the tomato agreement on April 24. It had become fairly evident that the kind and quantity of statistical information needed for making such a national proration on an equitable basis were sadly lacking. The situation in these crops is in sharp contrast to that in certain canning crops, such as cling peaches and asparagus, which are produced under highly specialized and geographically localized conditions. In the absence of provisions for regional allotments, canners who had been hopeful of deriving benefit under these coordination plans lost interest when the agreement tentatively approved was reduced to little more than a guaranty of price advances to growers. The number willing to sign was not sufficient to bring any of these agreements into effect and, as already noted, canners have now secured exemption from the agreement and license provisions of the act except as to asparagus and ripe olives.

DRIED FRUIT AGREEMENTS

Three agreements have been put in operation in the field of dried fruit marketing. The date-packing industry of California was the first of the dried fruit group[16] to seek to avail itself of the marketing agreement facilities of the Agricultural Adjustment Act. After informal discussions a public hearing was held at Indio City, California on December 18, 1933. This resulted in the drafting of a marketing agreement which secured the tentative approval of the Secretary on March 7 and, after acceptance by practically all of the date shippers, was made effective on June 8, 1934.[17]

The distinctive feature of this agreement was the naming by the control committee of such a monthly schedule of minimum prices as "will in the opinion of the committee after consideration of all market factors permit of sale during the ensuing month of such a quantity of dates at such prices that will result in the largest return to growers." The agreement contained no provisions for control of surplus supplies but aimed rather to distribute whatever volume of product might come forward from growers in such a way as to eliminate price cutting and secure as high a level of prices as was permitted by the state of market demand. This schedule of minimum prices established each month was regarded as "putting a bottom under the market" and getting a better average for the year than would otherwise have been the case.

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[16] Prior to the marketing agreement for handlers of domestically produced dates, there had been a code of fair competition for the imported date packing industry. This industry had been suffering from a highly competitive situation with price cutting not merely keen but, in the judgment of many of the persons involved, unfair. Relief from this situation was sought not under the Agricultural Adjustment Act, since no American producers were involved, but under the National Industrial Recovery Act. Under the President's transfer order of June 16 (see p. 31), this code came to the AAA for handling. After informal hearing on September 13, a code of fair competition for the imported date-packing industry was drawn up and approved by the President on Nov. 11, 1933. Besides its regulation of hours and wages and its general labor provision, the code set forth a schedule of unfair methods of competition which were to be prohibited. The four sections of this schedule covered advertising, misbranding, compliance with the Federal Food and Drugs Act, and destructive price cutting.

[17] It was accompanied by a license effective June 11, and was amended on September 18 to simplify the grading provisions.

This agreement was launched at a rather unfortunate time. A big crop was in prospect and emphasis in the agreement was placed on grading and the protection of quality. Subsequent adverse weather conditions reduced the quantity by perhaps one-third and resulted in a large percentage of low-grade product. In spite of somewhat disappointing results last year, there is indication that the date industry, later if not this year, will wish to undertake some new form of agreement under the amended act. Minimum price provisions are no longer possible, but a simple agreement designed to exclude low-grade dates from the market might be worked out.

On March 26, 1934 the raisin packers and growers of California participated in a public hearing at Fresno, California on a proposed marketing agreement for their industry. As already mentioned in our discussion of fresh grapes, the raisin industry had had a long history of co-operative and trade endeavor to secure co-ordinated action in the market. After a period of great prosperity for several years ending in 1921, there had followed a succession of disastrous years with oppressive surpluses, inability to liquidate credit obligations, agreements to refrain from harvesting part of the crop, and even the payment of a bonus for vines uprooted. None of these expedients had met with more than partial and temporary success, and discussions among the interested parties in the fall of 1933 had failed to produce sufficient harmony so that a marketing agreement could be perfected. The meeting on March 26, however, was more successful, in part perhaps because it was intimated that the extension of loans through federal credit agencies would be conditioned upon the inauguration of some sort of price-supporting undertaking. The proposals submitted at the March hearing were reduced to final form in an agreement which was tentatively approved by the Secretary on May 21. This was promptly signed by packers handling over 90 per cent of the raisin crop and was made effective on May 29. The accompanying license became effective two days later.

As in the date agreement, minimum prices were provided, but they were to apply to the whole season.[18] In order to adjust supplies at a level compatible with the maintenance of these minimum prices, the marketing control provision of the agreement (Article V) provides for the withholding of part of the raisins acquired by the packers (15 per cent in 1934) as a "control percentage to be turned over to the control board." [19] These raisins are held as a surplus stock off the market until after 75 per cent of the total crop of any variety has been acquired by the packers. If the control board then decides that all or any part of the reserve of any variety can be absorbed without breaking the minimum prices called for in the agreement, it may be offered to the packers at not less than the minimum price. The quantity any packer is permitted to purchase is in proportion to the tonnage which he has turned over to the control board. If any packer does not elect to take the whole of this quota, any remainder shall be re-offered to the other packers.

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[18] Prices for Thompson Seedless, Sultana, and Muscat raisins of the 1934 crop, and Thompson Seedless for 1933 were named in the agreement. This agreement is of the continuous type and provides that in subsequent years the schedule of minimum prices shall be established on recommendation of the control board made on or before June 15 and approved by the Secretary prior to July 1. The prices apply to raisins of standard or better grade. If inferior grades are used, they shall be bought at such differential prices as shall be determined by the control board.

[19] Consisting of five representatives of growers, five of packers, and one chosen by the vote of at least eight of these ten.

After July 1, the control board may dispose of any raisins falling within the control percentage at such prices as it thinks suitable for by-product uses or any other disposition which in its judgment will not interfere with the market for packed raisins. All such control percentage raisins must be disposed of by December 1 of the year following the one in which they are harvested. The proceeds of sale are distributed to the growers on a pool basis less the expenses involved in handling them.

The raisin agreement operated effectively until about April when there were violations on the part of several small packers. No very vigorous enforcement proceedings were undertaken; the situation, already somewhat complicated by the discussion of amendments which were in a highly controversial state of congressional debate, was still further complicated by the Schechter decision on May 27, 1935. Since first violators were not proceeded against, non-compliance was almost forced on others, and late in the season the agreement practically broke down, with prices declining some $10 or $15 per ton. Prices during the season as a whole, however, had been highly satisfactory. The crop was relatively light and prices averaged about $60 for marketable and surplus tonnage taken together.

In spite of the disappointing outcome of last year's agreement, grower sentiment strongly favors a new agreement under the amended act. Packers, on the other hand, are doubtful whether enforcement proceedings would be vigorous or could be effective until definite determination of the constitutionality of the act can be secured from the Supreme Court. The season's grape crop is heavy, with prospects of a large tonnage going into raisins. The Administration, therefore, has a difficult question to decide. Should it labor to promote an agreement in the face of packer opposition and such prospects of enforcement as it has? Or, should it terminate the whole agreement as the packers request and not initiate a new agreement which growers could perhaps muster a sufficient vote to force under the amendment provisions?

The marketing agreement for dried prunes produced in the state of California is the most complicated of the dried fruit agreements. The character of the product, the nature of the merchandising process, and the set-up of the co-operative and trade agencies involved necessitated the inclusion of detailed and complicated provisions covering the delivery and handling of the crop. In its simplest terms, however, the plan contemplates the segregation of all off-grade prunes and a portion of those of standard grades, and the placing of this portion of the crop in charge of a control committee authorized to handle it in the interest of the growers on a pooling basis. The proportion of the 1934 crop of standard prunes to be withheld in this "reserve percentage" might vary according to the size of the crop from 10 per cent at the 150,000–160,000-ton level to 44 per cent if the crop were above 250,000 tons. For subsequent years it may vary according to this same scale or 5 per cent less in the discretion of the control committee. The remainder, or "free percentage," of the crop may be purchased, sold, or handled by the trade agencies, co-operative or otherwise, freely according to their several merchandizing practices. The reserve percentage of standard prunes and the supply of sub-standard product are diverted into non-competitive markets, or by-product uses, or are released to the various distributors at the discretion of the control board in such a manner as it believes will best promote the interests of the industry. There is an elaborate scheme of grower advisory committees to exercise a veto power on the release of pool tonnage by the control board and the prices at which such fruit can be turned over to distributors.

The prune agreement, like the raisin agreement, represents the latest stage in the evolution of a long struggle to bring about controlled marketing of the whole California prune crop.[20] Co-operative organization dates back to the beginning of the century, but this early organization was short lived. After a period of disastrously low prices, the California Prune and Apricot Growers, Inc. staged a vigorous revival of co-operative effort in 1917, and this organization, in spite of difficulties which necessitated reorganization,[21] still functions as the pacemaker of both technological and commercial progress for the industry. It has not been able to win the adhesion of a dominating percentage of the growers, but, in lieu of this, has participated in an effort to effect the integration of merchandising operations for the whole industry through a sort of clearing-house arrangement which was operated during 1932 and 1933 under the name of the United Prune Growers of California.[22] While this organization was reasonably successful in operating a "prune industry plan" in 1932 and 1933, its leaders (including those in the underlying organizations—the California Prune and Apricot Growers' Association and the California Prune Pool) felt that their position would be enormously strengthened if they were to avail themselves of the marketing agreement and license provisions of the Adjustment Act as a means of bringing the minority interests (about 15 per cent) under the influence of the central selling agency.

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[20] It should be noted that the prune agreement contains no provisions for a co-ordinated plan covering the Oregon-Washington as well as the California crop. Prunes from the Northwest section are of the Italian, or tart, variety, and those of California are of the French, or sweet, variety, and hence are not completely competitive. It would seem, however, that the difference is not particularly greater than that between Florida and California oranges.

[21] Under the name California Prune and Apricot Growers' Association.

[22] *Sunsweet Standard* (house organ, California Prune and Apricot Growers' Association), July 1932, p. 6.

Efforts to perfect a marketing agreement plan were launched in the spring of 1933 and were continued for nearly a year before the various parties and interests could be brought to sufficient harmony so that a workable agreement could emerge. At length a public hearing was held in San Francisco on June 12, 1934. The session continued for four days while the various difficulties were being ironed out. By that time the season was so far advanced that it was apparent to all that unless prompt agreement could be secured the whole attempt would be futile. Faced with the alternative of failure, the various factions gave ground sufficiently to permit the drafting of an agreement for the Secretary's approval. This was given on August 13. The agreement was promptly signed by the distributors (only 13 in number but representing 93 per cent of the business) and made effective by the Secretary's order on August 17, together with a license effective the same day.

Owing to the lateness of the season at which the agreement was perfected and the high percentage of sub-grade prunes which resulted from weather conditions in the summer of 1934, the agreement did not get into operation under auspicious circumstances. The situation was further complicated by the erection of trade barriers in the countries of Central Europe which ordinarily afford an outlet for a considerable volume of dried prunes. While it is impossible to point to any improvement in prices as a result of the operation of the agreement, its proponents express confidence that it has prevented declines that otherwise would have brought complete demoralization of the market.[23]

At the request of packers, this agreement was amended on August 9, 1935 so as to limit its operation to the 1934 crop. It will continue in operation only to the extent that it is necessary to liquidate the stock of sub-standard prunes remaining in the hands of the control board. (All standard prunes from the surplus have been purchased by the Relief Administration.) With the difficult situation confronted by the industry and the amount of dissension which is still prevalent among its several elements, there is no discernible prospect of any revival of marketing agreement effort in this field.

WALNUTS AND PECANS

The situation of the "English" walnut growers of California resembles that of the citrus growers in that they have over a period of some years developed a co-operative marketing agency which is by far the largest factor in the walnut business. It controls 90 per cent of the product, which is about the same as the co-operative business in lemons and somewhat larger than that in oranges. Besides California, the states of Oregon and Washington also produce walnuts, though on a much smaller scale. Here, too, there is a co-operative association which is an important factor in the market, although it is not proportionately as large as the California Walnut Growers' Association.

The walnut crop of 1932 had been very large and some

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[23] The same, November 1934, pp. 3, 4, 13, 17.

14,000 tons of nuts were carried unsold into the 1933 season. Although that year's crop was comparatively short, the new crop and the carry-over together placed on distributive agencies the task of handling a supply of merchantable walnuts which was the largest in the history of the industry. Seeing a prospect of ruinously low prices, the walnut interests in California, Oregon, and Washington joined in proposing a marketing agreement which was presented at a public hearing in Washington, D. C. on September 12. The co-operatives bluntly asserted that in the past they had carried the complete burden of equalizing supplies and disposing of "surplus" nuts in by-product uses or in other low-price outlets. Non–co-operatives had shared in the benefits of such price-supporting efforts without bearing any of the financial burden. The large carry-over of 1933 made a continuation of this practice impossible, and the co-operatives served notice that, unless everybody joined in a marketing agreement, they would have to release their enormous carry-over stocks on the market and let everybody share in the resulting collapse of prices.

No opponents of the marketing agreement were present at the hearing on September 12, but telegrams were received from independent distributors and non–co-operative growers asking for a continuance of the hearing, so that their objections could be presented. Such a continuance was granted to September 18, at which time a representative of the independents presented arguments against certain features of the agreement which were considered unfair. He assured the Adjustment Administration, however, that the independents were willing to join in a stabilization program. With minor modifications designed to meet in part the objections presented at the adjourned hearing, the walnut agreement was tentatively approved and sent to the walnut packers for signatures. As soon as these were secured, it was signed by the Secretary of Agriculture, to become effective October 11, 1933.

Like other agreements in this group, the walnut marketing agreement provides for limiting the volume of the commodity to be placed on the domestic market and diverting any surplus above this amount to the market for shelled nuts, the export market, or carry-over into the following season. Determination of the disposal to be made of this reserve supply is placed in the hands of a control board representing co-operative associations, the independent packers, and the non–co-operative growers.

In determining the "salable percentage," the control board scrutinizes all available data as to estimated production and stocks of merchantable walnuts carried over from the previous year. The schedule of minimum trade prices as established by the control board requires a two-thirds vote of its members and is subject to disapproval by the Secretary. Prices may be changed during the season, but at least five days' notice must be given before such changes become effective. Besides the minimum prices, it is also provided that as long as the control board has unsold stocks of merchantable walnuts of a particular kind or quality, no packer may sell walnuts of this same "pack" at a price above a schedule of maximum prices set forth in the agreement.

As to the handling of surpluses, the marketing agreement provides that the control board shall have full authority to dispose of these to cracking plants or in any foreign country, with due provision against re-importation. The control board may not, however, sell more than 50 per cent of the surplus prior to January 15 of the given crop year. If, on September 1, the control board still has unsold stocks on hand and it appears that the crop of the ensuing year will be less than the estimated consumptive demand, the board shall release to each packer his pro rata share of the surplus up to an amount which will make up the estimated deficiency of the forthcoming crop. Thus the agreement would operate to check extreme advances of prices in short-crop years as well as to prevent extreme declines in flush years.

The walnut marketing agreement makes no direct provision as to the prices which processors must pay to producers, nor does it have any provisions covering handling charges. In view of the fact that approximately 90 per cent of the crop is packed and marketed by the California Walnut Growers' Association, and the North Pacific Walnut Growers' Association, a large majority of growers are assured that any improvement brought about in wholesale prices will be reflected back to them. As for the other 10 per cent, it will be left to the force of competition to determine whether there will be a similar passing on of price benefits by the independent packer to the non-co-operative grower.

This agreement worked smoothly[24] during the 1933 crop-moving period; the carry-over was reduced and prices improved. It is now in effect as to the 1934 crop after having been amended on August 27. These amendments did not change the fundamental character of the agreement but were designed to improve its administrative procedure.

The walnut agreement is now being revamped under the 1935 amendments to the Adjustment Act. The principal change necessitated by these amendments is the dropping of minimum price provisions. Several minor changes, however, have been introduced to simplify and improve operation. The text of the agreement as amended in August 1934 is presented in Appendix B for the purpose of showing the details of operation of a "reserve tonnage" type of agreement.

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[24] One packer was charged with violating the license and, after public hearing, his license was suspended for a period of one year. This suspension, however, was stayed on condition that the firm in future comply with the provision of the license.

Developments in the pecan industry bear striking similarity to those already discussed in connection with dates, the first effort being made to secure a code rather than a marketing agreement. The distribution of pecans had long been subject to conditions covering grading, standardization, rebating, and other trade practices which were highly unsatisfactory. It was evident that the working out of a generally acceptable marketing agreement would consume more time than could be allowed if conditions were to be improved for the handling of the 1933 pack. Accordingly, an effort was launched to secure a code of fair competition for distributors of paper-shell pecans, and a public hearing was set for October 23.

Considerable disagreement developed at this hearing and Administrator Peek undertook to expedite action by a still simpler procedure. He sought to get distributors to accept a schedule of prices and to sign an informal agreement that they would adhere to it. He therefore wrote a letter to all distributors on October 18 urging the maintenance of prices at a level at least equal to those then being quoted. These prices, he said,

> . . . were considered as not being too high in light of prospective supply and demand conditions. It was felt, however, that these prices might be reduced in case distributors should resort to competitive price cutting as in previous years. A reduction in price at

> this season of the year similar to reductions in prior years resulting from unwarranted price cutting might easily mean a loss of $250,000 to pecan producers in the next two months.[25]

The schedule of prices covered 17 items according to variety, grade, and size, and ranged from 15 to 31 cents per pound. He urged distributors, besides accepting these prices, to agree to eliminate various unfair trade practices, particularly secret rebates, allowances, concessions, or other subterfuges which would tend to undermine the agreement to maintain the proposed price schedule. Such an agreement had already been arrived at by distributors who attended the code hearing and who represented some 80 per cent of the volume handled.

At this point, code and marketing agreement efforts with respect to distributors of paper-shell pecans were allowed to rest, but on November 27 a public hearing was held to consider a code of fair competition for the shelling of seedling or wild pecans. This code, like the other, was not approved by AAA but was transferred to NRA, where it was approved October 23, 1934. Agitation continued for some sort of agreement which could be put in effect before the opening of the 1934 crop-moving season. A public hearing was called for October 1 at Montgomery, Alabama to cover all pecans marketed in the shell from the Atlantic seaboard to Texas and Oklahoma. This effort resulted in the completion of an agreement which covered paper-shell nuts only and which was tentatively approved on November 7.

This agreement stipulated a schedule of minimum prices to growers designed to raise prices on an average of about 2 cents a pound above the price prevailing during the last two years. It also laid emphasis on the use of

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[25] *AAA Press Release No. 866-34*, p. 2.

United States grades and established prices for graded nuts about a cent and a half higher than for orchard run or ungraded stock. The agreement, however, contained no provision for equalizing supplies as between seasons or withholding any nuts in a "reserve percentage" at the disposal of the control board.[26] The pecan agreement was finally made effective on March 13, 1935 solely for the purpose of enabling the control board to organize and see what could be done about putting it in operation for the 1935 season.

In view of the oft-repeated belief of Adjustment Administration officials that marketing agreements can be successful only where marketing channels are well defined, it seems somewhat doubtful whether a pecan marketing agreement could be made to work. Pecan trees are scattered over a wide area in the Southern states and many farmers produce small lots of nuts which are taken in trade by local merchants and handled in ways which are very hard to bring under any orderly scheme of distributive organization. The present agreement is limited to so-called paper-shell nuts, but the line of demarcation is none too clear and seedling nuts are distinctly competitive. The situation is widely at variance with that of the walnut industry. In order to maintain a differential price for high-quality nuts, it is proposed to set up strict grading and divert all off-grade product to shellers (see page 337).

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[26] A marketing agreement for the almond industry has been drawn up and was discussed at a public hearing at Berkeley, Calif. on Jan. 7, 1935. Its principal features—minimum prices and the withholding of a "control percentage"—follow the general lines of the walnut marketing agreement. The chief interest back of this agreement was that of growers who were dissatisfied with existing price levels. Distributors, however, including the co-operatives, were aggressive proponents of the plan. The hearing was largely for the purpose of discussing the issues and seeing whether any economic basis for an agreement could be arrived at. None has been found thus far.

CHAPTER X

DAIRY PRODUCTS

In Chapters IV, V, and VI we discussed the use of marketing agreements for four basic commodities—wheat, tobacco, peanuts, and rice. These eleven agreements were mostly of limited, special, and temporary types, and the drafting of new agreements of similar character or, with one or two exceptions, the continuance of the old agreements now appears unlikely. In Chapters VII, VIII, and IX we examined agreements as applied to some 25 general crops. For these crops the marketing agreement method constitutes the only type of adjustment available under the act. We turn now to a group of products for which this method alone has been used, although it was not the only one available. The way in which it has been applied differs so markedly from the course followed for the general crops group as to require separate treatment.

In terms of area embraced or number of groups affected by market adjustment undertakings, dairy products outrank all others. At the peak (December 5, 1934 to February 6, 1935) there were 50 fluid milk licenses and two additional milk product agreements in effect. On September 1, 1935, there were 34 licenses and two agreements. The course of this evolution is traced in great detail in a companion volumes of this series[1] as part of an analysis of the whole adjustment problem of the dairy industry. In order to round out our discussion of marketing agreements and licenses as a type of adjustment procedure alternative to the processing tax and benefit payment approach, we shall here undertake to set forth briefly the significant features of the milk marketing agreements and licenses and the principles and issues which they involved. Such a factual foundation must be laid in order that we may include dairy products along with general crops in our analysis of the results, possibilities, and limitations of the marketing agreement device which will be undertaken in the closing chapters of this book.

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[1] John D. Black, *The Dairy Industry and the AAA.*

During the time when the Agricultural Adjustment Act was under consideration, representatives of the dairy interests had manifested considerable doubt as to whether it was desirable to have themselves included among the groups of producers eligible under its processing tax and benefit payment features. They finally decided to do so but apparently only as a precautionary measure, their chief interest being directed toward seeing what advantage they could derive under its marketing agreement and licensing provisions.

After the Adjustment Administration was set up, there was some question as to whether milk should be regarded as a single commodity or whether fluid milk, butter, cheese, evaporated milk, and other dairy products should each be regarded as a separate commodity. Because of the interrelated character of the markets for these several products, it was at first proposed that several—probably six—national agreements or co-ordinated sets of local agreements be simultaneously developed. National agreements were worked out and made effective for evaporated milk and dry milk, but proposed agreements for butter, cheese, and ice cream failed of consummation.[2] The major part of the program of the Dairy Section of the Adjustment

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[2] During March and April 1935, hearings were held in eight cities in the West Coast and Mountain region to consider proposed butter marketing agree-

Administration has been devoted to the development of separate fluid milk marketing agreements and licenses for particular urban areas. In connection with the early milk marketing agreements, it was proposed that there should be nation-wide co-ordination through a national milk industries board [3] composed of representatives from regional boards. These, in turn, were to be made up of representatives chosen from milk industry boards set up for each metropolitan market. In practice, Detroit was the only milk market for which a local industry board was ever set up, and the idea of a national co-ordination machinery has for the present at least been dropped. Even the Detroit board was not an outgrowth of this national co-ordination but came later under a new milk plan.

Producers of fluid milk had in general been able to maintain their returns during the agricultural depression at a relatively satisfactory level as compared with those for

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ments. These did not fix the price of butter but provided differentials between four grades of cream and corresponding grades of butter designed to induce improvements in methods of production and handling and in the quality of the product. Though there was considerable support of these proposals on the part of co-operative creameries, there was a good deal of opposition from centralizers and the proposal has not as yet resulted in the consummation of any agreement. The AAA on May 25 informed interested parties that further action would be "limited to states which have requested federal regulation of interstate movements of butter and cream and which have already adopted or will soon adopt some form of state regulation for these products. . . . Conferences with state authorities and members of the industry will be held . . . to perfect common rules and regulations affecting the interstate movement of butter and butterfat with the powers and within the jurisdiction of the federal government." *AAA Press Release No. 2217-35.* See also footnote 5, p. 301.

[3] The plan, although having many more operating units than the national stabilization plan for citrus fruits discussed in Chap. VIII, was essentially identical in its general conception. The regional and national boards were to operate in an advisory capacity, both to the Adjustment Administration and to the administrative agencies set up under the local milk marketing agreements. The purpose was to co-ordinate the whole structure of milk prices and stabilize economic relations between the several parts of the industry.

most of the staple crops. During the winter and spring of 1932 and 1933, however, they had been rapidly losing this advantageous position. At the time the act was under consideration, fluid milk prices in most metropolitan areas were getting down to such levels that milk strikes had occurred at several places and were threatened in others. From the time the Adjustment Act was presented to Congress (March 17), therefore, certain milk producers' organizations and distributors began giving serious attention to the possibilities of using agreements and licenses to supplement their previous efforts. In general, the co-operatives and the distributor organizations had worked out mutually satisfactory relations in the several markets and were chiefly concerned to continue this situation but at the same time to avail themselves of the provisions of the Adjustment Act to strengthen the price situation and protect themselves from the competition of unorganized producers and distributors. They were not disposed to follow the suggestion of universal licensing and the reform of market practices and narrowing of market spreads which had been advanced by certain elements in the councils of the Department of Agriculture.[4]

[4] For example, the committee on dairy products which had been set up to study the possibilities of the bill during the time that it was pending in Congress and to make recommendations as to how it might be put into effect. It "recommended that all processors, associations of producers, and others engaged in the handling of dairy products or any competing product thereof be licensed. . . . The purpose of applying the licensing provisions would be to eliminate unfair practices or charges, as a result of which some economies in procurement costs, manufacturing costs, and distribution costs of fluid milk and cream might be effected, with benefits passed back to producers in the form of higher net prices. It may be necessary for consumers to share in the benefits of lower costs, if consumption of dairy products is to be maintained at a level that will move into consumption the large volume of dairy products now being produced." *Report of the Committee on the Dairy Industry,* U. S. Department of Agriculture, Apr. 29, 1933.

MILK MARKET PRACTICES AND PRICE STRUCTURE

In order to understand the issues raised in connection with fluid milk marketing agreements, a few words must be said about the system of milk marketing which has grown up in this country. It represents a mechanism about as far removed from the direct "higgling of the market" which we read about in texts in elementary economics as anything to be found in modern economic life. It embodies the results of a long process of evolution in the relations between distributors on the one side, many of whom have grown to large size through the process of consolidation or centralization, and on the other side co-operative organizations, which have sought to build up equally strong and effective agencies to conserve the producer's interest. The general purpose has been to effect such a structure of prices to wholesale and retail buyers of milk and cream as would promote certain desired objectives on the producer side and on the consumer side respectively.

As to the producer, there was no thought that any individual's return would or should reflect accurately the price paid by consumers for his product for some particular use to which it was put. The intention was rather to have such a system of payment as would furnish a group of dairymen the economic incentives to produce the desirable quantity and quality of product at places where and times when it could be most advantageously handled and put into consumption channels. As to consumers, the intention was to encourage consumption, keep the market outlets in economically sound relationship to one another, and have price changes come at relatively infrequent intervals.

Such plans involve in varying degrees a segregation of city milksheds from the rest of the dairy industry. At its best, this would mean only such confining of fluid milk production to a certain area or to a certain group of producers as would insure a more thorough or more economical compliance with desirable standards of sanitation as well as adequate supplies of fresh milk and cream during low-producing seasons with a minimum of excess milk during flush seasons which, though produced under high-cost conditions, would have to go into low-cost uses. At its worst, this system would mean the monopolization of the fluid milk market for a favored group with the pushing up of prices to a point where they were disproportionate to those received in dairy sections devoted to the production of butter, cheese, and evaporated milk. That is, it would create premiums which would more than offset transportation differentials, expense involved in meeting sanitation requirements, and the cost of such seasonal equalization of production as is economically justified.

Controversy has waged long and will long continue to wage over the question of just what constitutes a proper degree of segregation of fluid milksheds from the rest of the dairy industry and a proper system of price differentials to recognize the just claims of this branch of the industry without exploiting consumers. The fully elaborated price system which has been devised to meet this situation consists of two parts.[5]

First, it is sought to put milk sold in the metropolitan area on a "class-price" basis according to the use to which it is put. Whole milk, since it can be delivered to the city distributor only at the greatest cost, commands the highest, or Class I, price. Milk used for supplying fluid cream to city users constitutes Class II. Milk in excess of these requirements and which is therefore diverted to low-price uses in the making of ice cream, to be churned into butter, or made into by-products constitutes the lowest or "surplus" use and commands a Class III price. Sometimes the system of classification is reduced so that milk (or milk and cream) makes up Class I and all other milk, Class II. Occasionally, also, surplus milk may be further differentiated so that the classification may recognize four or even five classes.[6] Certain dealers may have their business so arranged that they can dispose of practically all their milk at the highest price as bottled milk. Somewhere in the city milk distributing business, however, a considerable reserve must be carried from day to day and from month to month if changes in consumption—some of them sudden and unpredictable—are to be properly met. This situation has introduced great conflicts and much friction in the negotiation of prices between producer associations and the several distributors, the bone of contention being, how shall the burden of carrying the market reserve be distributed? By requiring all dealers to pay for milk according to the actual conditions of use, these difficulties are avoided.

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[5] For purposes of simplicity, we are speaking as though a single uniform practice had been developed for the various markets. As a matter of fact, the several markets show many local variations and represent different stages of evolution.

The second part of this price structure concerns the manner in which producers are paid. Sometimes the farmer is paid a "blended" price, which may represent the average of prices received by his particular dealer, and in other instances represents the average of a "pool" made up from the settlements of all distributors according to the use to which the different parcels of milk are put. Thus he shares equally as one of the group supplying this particular milkshed, regardless of whether he happens to be so situated that the milk which he produces is all sold as fluid milk or might conceivably all go to the lowest form of by-product use. In the most highly elaborated systems, however, the producer does not receive such a pool price but is paid on a differential basis which distinguishes between "base" milk and "surplus."

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[6] The number of classes, the location of the boundaries between them, and the differentials in prices of the several classes are arrived at through negotiation between the distributor groups and producer associations.

This plan serves to make equitable returns to producers having different proportions of seasonal surplus and encourages them to adjust production seasonally according to the demands of the market. Under this system a base period is established during certain low production months when approximately all the milk produced by the members is absorbed in the Class I use. For this amount of milk the farmer is then paid during the ensuing year at the base price, excess above this amount being paid for as surplus at a lower price.

In practice, a variety of factors have during recent years caused the amount of milk which producers in the various milk markets wished to deliver to exceed the amount which the market could absorb at existing scales of prices. Hence the base-surplus plan gave way to a base-rating system under which producers were allotted percentages of the milk delivered during the base-making period as the amount for which they would thereafter be paid the basic price. Or, instead of being permitted to establish a new base each year, a system of "closed" bases was introduced, whereby the figure established in the previous year or the average of several previous years was used. Other devices, designed to preclude the entry of new producers into the given market, the introduction of a waiting period before a new producer could establish a base, the delimitation of milkshed boundaries (sometimes by agreement with municipal authorities as to the limits of the inspection area), and the like were used as means of keeping particular metropolitan markets for particular groups of producers and of keeping the general level of returns above that of outside unorganized areas or other unorganized producers within the dairy region.

If such artificial enhancement in price levels assumes any considerable magnitude, it inevitably leads to the attempt on the part of distributors to break over these barriers and tap cheaper sources of milk outside.[7] Equally, it leads to attempts of outside producers to break over these barriers and obtain access to the higher price market within. Naturally, there is a community of interests between these two parties, each tending to facilitate the effort of the other.

Such a scheme of prices as was being worked out by the co-operatives bargaining collectively with the distributors works well enough during periods of generally advancing prices. But when decline of the general price structure sets in, trouble is encountered. The maintenance of a Class I price at an artificial level produces wide differentials between it and other milk prices, increases surplus, and ultimately brings the types of price cutting which were discussed in the preceding paragraph. This process is likely to continue till differentials are reduced considerably below what is considered normal for a competitive situation—that is, till returns are below the level required to keep producers permanently in business. Such price cutting was under way in important milk markets at the time the AAA came into being. Both co-operative milk producers' associations and the large distributors with whom they had sought to establish stabilized market relations turned to the marketing agreement device as a means of remedying this situation.

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[7] In some cases these "outside producers" are not located beyond the geographical bounds of the milkshed, but are outside the collectively bargaining group. In the Chicago area, for example, there were a considerable number of dairymen who had ostracized themselves from the market by opposition to tuberculosis testing at the time the Pure Milk Association was formed.

The distributors felt that they could not maintain prices such as the producer insisted upon unless they were protected against the price cutting of distributors who were able to get cheaper milk elsewhere. The producer organizations asserted that prices must be maintained or even advanced if their members were to survive. This could be done only if other producers were kept from entering the market with low-priced supplies. The co-operatives were as much concerned as were the distributors in the elimination or regulation of unorganized dealers since it was through the latter that the price-cutting producer often obtained access to the market. The depression had increased the number of small dealers through the entry of many individuals who, having lost their wage or salary employment elsewhere, sought to get at least some return from their time and the use of a truck or automobile by selling a little milk whenever they could find customers—often through price concessions.[8] Likewise the depression increased the number of producer-distributors. This tended further to increase the proportion of milk to be carried as surplus by the organized producers under the price plan.[9] Hence the organized distributors and producers were desirous that producer-distributors be required under the agreement or license to share fully in this burden along with the organized producers.

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[8] These were known variously as "sub-dealers," "peddlers," or "bobtailers." They usually bought their milk from pasteurizers within the sales area. Another type of cut-price distributing came from roadside stands and milk depots, generally located just beyond the reach of the city health department.

[9] Although obviously the producer-distributor would not be free from the necessity of carrying some sort of reserve of his own.

THE FIFTEEN FLUID MILK AGREEMENTS

The very day that the Adjustment Act was signed, representatives from the Chicago milkshed called upon the Secretary of Agriculture with fairly definite proposals for a marketing agreement and with requests that prompt and vigorous action be taken to carry such a plan into effect. The Milk Council, Inc. (21 large dealers representing about 80 per cent of the distribution in the Chicago metropolitan area), the Chicago Milk Dealers' Association (embracing over 100 small dealers), and the Pure Milk Association (a co-operative marketing over 75 per cent of the milk produced and consumed in the metropolitan area) were the proponents of this agreement. They had been working together closely in the operation of a milk marketing system such as has been described in the preceding pages, but its operation was being disturbed by the competitive activities of numerous small distributors and of producers within the territory who were not members of the co-operative, as well as by the competition of producers in the surrounding dairy products territory.

The formulating of an agreement to meet this situation was a pioneer effort for the AAA staff and presented many difficulties to be wrestled with at the same time that the proponents of the agreement were urging haste to bring the Adjustment Administration to support the measures which they had been struggling to maintain in Chicago. After being rewritten many times, the agreement was finally approved and became effective on August 1, 1933, together with a license on the same day. The agreement itself was brief in form, although supplemented by four rather detailed exhibits covering prices to be paid to producers, resale prices, a schedule of fair trade practices, and rules for control of basic production. The agreement bound the signatories to observe this double schedule of prices and the plan of marketing set forth in the exhibits.[10]

As to the wisdom of establishing both minimum prices to producers and resale prices for distributors, opinion was soon divided. The naming of consumer prices was opposed by those who felt that such a policy did not give sufficient protection to the consumer's interest. It was also opposed on the ground that by naming both producer and consumer prices, the Adjustment Administration undertook to maintain a schedule of distributive charges, which in the eyes of the Consumers' Counsel and many persons outside the Adjustment Administration were excessive. Those who supported the policy were convinced that any practical possibility of improving returns to producers must start with the maintenance of prices to distributors which would make it possible for them to secure reasonable returns. This first step would make possible the elimination of the fly-by-night distributor who was selling milk below the prevailing rate not because he had a lower cost of operation or higher level of efficiency but because he was getting cheap milk either within the milkshed or from outside. The price-cutting tactics of such a dealer sometimes resulted in his own insolvency and non-payment for milk which producers had shipped to him.[11]

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[10] Dr. Clyde L. King, head of the Dairy Section of the Adjustment Administration, was a widely informed and thoroughly seasoned student of the fluid milk market, having acquired a wealth of practical experience as arbitrator of milk disputes in the principal markets of the country from the days of war-time food control down to the time when he accepted his position in the Adjustment Administration. In July 1933 he stated the policy with reference to milk marketing agreements as follows: "The Administration is going to get pre-war parity by trade agreements that will protect the market from demoralizing forces. To this end licenses will be issued. . . . If the granting of licenses means anything, it means if anyone buys from the farmer at a price other than that named in the license as a minimum price to the producer, or buys on any plan other than prescribed in the agreement, such a person is subject to the heavy penalties prescribed in the act. Now these milk marketing agreements will provide for the elimination of practices that tend to disrupt the price structure. Reducing marketing expense through abolishing unfair trade practices and encouraging such marketing methods and practices as will result in a better product and therefore in increasing consumption I hope ought to bring milk to the consumer's doorstep at the least cost and at a price to producers that will bring pre-war parity, at least as soon as marketing conditions thus assisted will permit." *American Co-operation, 1933,* pp. 289-90.

Proponents of the agreement with its two price schedules looked to it as a means of eliminating price-cutting distributors and they were ready to defer for a time the question of whether, freed of this type of competition, the distributors would be in a position to accept a revision of their margins. If it should develop that they were not willing to accept such adjustments on a voluntary basis through the process of negotiation, there was of course the question of how far such action could be forced under the powers covered by the license. This is an issue which has been implicit in much of the marketing agreement and licensing activity of the Adjustment Administration. We shall return to it in the next chapter.

The resale prices named in the Chicago agreement covered 19 items embraced in a wholesale price schedule, a price schedule to stores, and a retail price schedule. These schedules carried into effect the level of prices then recognized by agreement between the Pure Milk Association and the major distributors. A majority of the other agreements followed the Chicago pattern in specifying retail prices, but the Knoxville, New Orleans, Des Moines, and Boston agreements named both maximum and minimum retail prices, the range between them being 1 cent per quart. This was expected by some persons to afford dealers a certain amount of flexibility, such as making possible a differential between the cash-and-carry price at stores and the delivered price from wagons. Such a differential had been a matter of great controversy in formulating the agreements, partly because of the practice of certain chain stores to use milk as a "loss leader." Besides the leeway of 1 cent provided in the four agreements just mentioned, the Baltimore agreement named a maximum price but no minimum, thus permitting a lower store price. The Chicago agreement and six other early ones did not provide a store differential.

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[11] A further reason for including resale prices in milk marketing agreements grew out of the fact that a considerable amount of fluid milk is sold direct by producers either as individuals, as dairy companies which operate farms as well as delivery wagons, or by producers' co-operatives which actually sell milk to consumers rather than being mere bargaining associations. Since in these cases there is no producer price which can be clearly differentiated from the distributor charge, the simplest way of assuring that such milk would be on a competitive equality with that handled through distributors who were not producers would be to establish the sale price of the product.

The producer price named in the Chicago agreement was $1.75 per 100 pounds of milk of 3.5 per cent butterfat content.[12] This was no advance of the rate then obtaining in the market,[13] and so the gain to the producer was largely that the agreement undertook to make all dealers actually pay the rate then nominally in force. It did not accede to the request of the producers' representatives that the price should be immediately advanced to $2.00 or above. On November 3, however, the price was advanced to $2.10.

The undertaking to maintain any specified schedule of producer prices or to advance them raises the question as to the mechanism by which this was to be accomplished. No positive and direct-acting devices for curtailment of production or such withholding of shipments as we have observed in the special crops agreements were provided. Great reliance appears to have been placed on the ability and willingness of the consumer market to pay a higher scale of prices if only all channels of distribution were organized for the maintenance of such a higher price. The situation in this regard appears to have been essentially similar to that which we have already discussed in connection with the approach of Administrators Peek and Brand to the distributors of other types of agricultural commodities through the Food Trades Advisory Council, and the specific drives for higher prices of canning crops in the absence even of an agreement (page 179) or of peanuts and tobacco under the special types of agreements used for those commodities. In the latter case, of course, the undertaking of the processors to maintain the higher level of prices was conditioned upon assurances that a production control program would be forthcoming in subsequent years.

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[12] This rate was based on country plant delivery at the 70-mile zone, about equivalent to a $2.10 city price. Prices under the other milk agreements were on a city-delivered basis—$1.85 in Detroit, $1.95 in Des Moines, and $1.95 in St. Louis; (for 4 per cent milk) $2.35 at Philadelphia, and $2.40 at Knoxville and New Orleans; and $3.02 at Richmond for 3.7 per cent milk. These prices proved to be high enough to aggravate the difficulty from outside milk seeking to gain access to the respective markets and thus enhanced the difficulty of enforcement.

[13] However, both producer prices and resale prices had been advanced during May, presumably in anticipation of the strengthening effect of the agreement.

There was also at this time a rather prevalent belief that the New Deal would promptly produce such a degree of general recovery as to increase the ability and willingness of consumers to pay such prices for farm commodities as would make parity prices promptly possible. Dr. King, addressing the American Institute of Co-operation at Raleigh on July 26, 1933, said:

> I hope we may see pre-war parity of milk prices before next January, provided of course that the price of other farm products go up so that farmers will have alternatives other than milk production. In any case, we must be ready to carry on in a permanent way what-

> ever good may come out of this New Deal, in which I believe strongly.[14]

The ultimate reliance on production control was recognized, however, as is indicated at a later point in the same address, where he said:

> We would not be doing our duty in the milk trade agreements unless we put in all of them a provision that there must be some plan for controlling and decreasing production. Any dairyman who knows the facts knows that we are now within 1 per cent of the exporting of dairy products.[15]

The type of production control placed in the Chicago milk marketing agreement (and others), however, was not a restriction upon the total amount of fluid milk which the dairyman might produce but upon the amount which would be permitted to share in the fluid milk demand of the market covered by the agreement. Surplus above this amount was outside the control and would have to be dealt with in the market for milk used in manufacture as part of another dairy adjustment problem.

The attitude of the Adjustment Administration was clearly set forth in connection with the announcement of the signing of the agreement:

> With cut-throat competition outlawed, with dairy production measurably regulated by differential prices, and with consumers protected by an equitable price policy arrived at under federal supervision, the dairy industry has a chance, as the Europeans phrase the matter, to rationalize itself in the most thoroughgoing manner. . . . In general, agreements will set up production areas within which individual dairymen will have specified quantities of milk

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[14] *American Co-operation, 1933,* p. 286.

[15] The same, p. 290. This point had also been urged by a special committee on production control appointed at a national dairy conference held in Washington on June 26. *AAA Press Release No. 7-34.*

> that they may sell to fluid milk distributors at specified prices. . . . In many instances the milk areas delimited by the agreements coincide with those established by boards of health for the sanitary control of milk supplies. . . . Production control of some form will be insisted on in all fluid milk markets. . . . The agreements regulate the individual dairyman's total production, through the quantity that he may sell at fluid milk prices. Excessively high prices for fluid milk would tend to produce an oversupply of surplus milk for manufacturing. . . . For the present, the Administration wishes to ascertain what effect on production will be exercised by the differential price system. With surplus milk bringing lower prices than base milk, the producers will have, it is hoped, a constant incentive to exercise moderation. Should they not do so, some other method would be tried or prices would be lowered.[16]

Thus the taking over into the agreements of the class-price and base-rating system already in vogue in Chicago and most of the other 14 cities for which milk marketing agreements were made effective [17] put a very elastic type of production control into operation. Several other barriers against excessive supplies were also included. First was the delimitation of the milkshed or "producer area" included in the "definitions" section of the agreements. Boundaries were in part determined by inspection areas of the respective metropolitan health authorities. This method suggests one type of control mechanism both in the interest of economy of operation and of sound price economics which might be made quite rigid in case the agreement and license provision should subsequently be put to use as a thoroughgoing agency of milk industry regulation. In some cases the area followed carefully the specified metes and bounds of a previously established supply zone. It is not apparent in any case that previously tributary territory was cut off; in some instances at least (where the boundaries run with county lines) they were so loose as to permit further expansion.[18]

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[16] *AAA Press Release No. 204-34.*

[17] Besides the cities which already had such a plan, three were introduced to the system through the AAA agreements. It was not incorporated in the agreements of Des Moines or the Twin Cities, whose milksheds can hardly be differentiated from the great dairy manufacturing territory adjacent.

The Chicago agreement permitted the entry of new producers into the market and gave them a production base deemed to be equitable in relation to that of previous producers. The AAA's announcement of policy at the time said:

> The allotment of production quotas to individual dairymen rests on the general rule that all those who have supplied the market previously may continue to do so. New producers may enter the field, on the same basis as did the producers previously in the market. It would be obviously inconsistent to regulate the production of established dairymen, without reasonably restricting new production.[19]

The agreement provided that the base for new producers should be established during the first 90 days in which they sold their milk in the Chicago metropolitan area but should be equal to only 60 per cent of their average daily production during that period. All but three subsequent agreements contained provisions making it necessary for any new producer who wished to enter the market first to obtain from the administrative authorities a "certificate of necessity" permitting him to sell in that market and to establish a production base according to which settlements would be made.

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[18] That they were regarded as restrictionary is evidenced by contemporary statements. The attorney of the New England Milk Producers' Association said: "Plans for control of production are made a part of the marketing agreements. The milkshed for a particular market is defined as is also the distribution area for a particular market." *American Co-operation, 1933,* p. 231. See also the AAA statement on p. 212, and King's statement in F. F. Lininger, *Dairy Products under the Agricultural Adjustment Act,* pp. 42-43.

[19] *AAA Press Release No. 204-34.*

Besides the producer price and resale price provision, the milk marketing agreements all incorporated a section dealing with fair trade practices designed to protect distributors against devices such as discounts, rebates, free services, advertising allowances, or free milk, which would constitute evasions of the price schedule even while it was being nominally observed, or other practices whereby one distributor might seek to gain trade at the expense of another.

As to administration, the marketing agreements did not set up control committees of the type which we have been discussing in preceding chapters. In the Boston marketing agreement a market director was provided and an arbitration committee consisting of one representative of producers, one of distributors, and a third member elected by these two. In other agreements, there was a general provision permitting the contract producers and contract distributors to set up such agency as they might deem necessary to receive complaints, adjust disputes, and in general supervise the carrying out of the agreement. As a matter of fact, this provision did not lead to the setting up of any new administrative machinery where existing co-operatives and distributors' associations had already evolved methods for carrying out such arrangements as they had been able to arrive at on the basis of private negotiation. These arrangements could be continued effectively and extended to embrace the terms of the agreement so far as they were concerned. They were woefully inadequate, however, as to other parties brought within the terms of the license who were the ones most likely to seek to evade it.

One important task of any administrative agency was to furnish to the non–co-operatives certain services which were performed by co-operatives and their members and financed through a check-off system. Co-operatives were unwilling that non-members be exempt from such a charge, and it was also desirable, if the marketing agreement were to be made effective, that these services be performed, notably verifying dealers' reports of the class of use into which their milk went, the checking of weights and butterfat tests, and the guaranteeing of shippers against loss owing to the failure of any dealer to settle for milk purchased on a credit basis. If non-members were exempt from such a charge, it would in effect give them a differential advantage in price since they got a large part of the benefit of these services anyway. It had been a cause of complaint in the past that they avoided payment of their share of the cost of such services although sharing in the benefits. If market practices were to be brought to a uniformly high standard for all dealers under the AAA agreements, it was essential that weights and tests of all dealers be checked and all payments guaranteed. But the task of rendering these services and the task of collecting the appropriate service charges on all milk imposed serious difficulty on the newly formed administrative agencies. In cities where there were local branches of the National Dairy Council, this agency was ordinarily designated as the one through which this function was to be performed. In Chicago it was known as the Milk Foundation, Inc. Another difficulty came in connection with the collection of equalization payments[20] from dealers in cities where an equalization pool was set up. Most of the equalization funds have been far in arrears.

There was much opposition to the agreements on the ground that they constituted mutually accepted deals between certain distributor organizations and producer associations and that no adequate opportunity for hearing had been given to many of the smaller parties whose interests were involved. In view of these claims, the agreements at Chicago, Philadelphia, and Boston were re-opened to public hearing and considerable further light was shed upon the complexity of the issues involved and the difficulties of getting these licenses on a fully workable basis. The situation had become further complicated by sharp declines in the price of butter—the foundation of the whole dairy structure. Although the government undertook a butter purchase operation, results upon the market were far from satisfactory to milk producers.

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[20] See John D. Black, The Dairy Industry and the AAA, p. 112.

ABANDONMENT OF AGREEMENTS

Complaints of violations in the Chicago milkshed began to come in from several sources within a few days after the license was made effective, and much the same story was repeated in other markets. First, the attempt to maintain the established schedules of producer and resale prices resulted in evasions by small dealers who could maintain themselves in business in competition with the large distributors only by making concessions in price to buyers and by securing their milk from producers at prices lower than those permitted under the license.[21] Since such sources of cheaper milk were available, this type of violation was frequent. Second came violations on the part of producer distributors who were tempted to handle the business under the price protection offered by the license schedules of price. Third was non-compliance with the price schedules on the part of roadside stands and, fourth, that of chain stores who insisted on a lower cash-and-carry price.

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[21] Most of the evasions which became the basis of the enforcement actions related to failure to maintain resale prices. Evidence seems to indicate, however, that in the majority of cases where there was cutting of resale prices, the cutting was in part at least passed on to producers.

In general, the signatories insisted that enforcement was both practicable and desirable if the Adjustment Administration would only move vigorously toward that end. The office of the General Counsel, however, was loath to come into court with a series of cases of dubious defensibility, thereby threatening the legal position of the whole Adjustment Act.[22] Many of those who had entered into agreements undoubtedly felt at the time that the license would provide a quick and effective means of weeding out every competitor who failed to follow the provisions of the agreement to the letter. In fact, however, a license could be revoked only after hearing and the presentation of evidence according to procedures almost as exacting as those of a lawsuit. Furthermore, the alleged violators had resorted to the courts to defend their actions and to attack the terms of the license which had been imposed upon them.[23] From the time the first agreement was put into effect up to the end of 1933, several hundred orders were issued to milk distributors [24] to show cause why their licenses should not be suspended or revoked. The first actual revocations occurred on November 13 and covered dealers at Ephrata, Pennsylvania and Hagerstown, Maryland.

Before these legal issues could be decided, the Chicago and New Orleans agreements were cancelled as of December 31 and February 1 respectively, both at the request of the signatories. Following this, the remaining 13 agreements were terminated by the Secretary's order as of February 1. Thereafter the Adjustment Administration proceeded with a policy of developing such an arrangement for each market as it believed suitable through the revision of existing licenses rather than waiting for local interests to negotiate agreements which when put in form acceptable to the Adjustment Administration would be imposed by license upon the other distributors and thence upon the producers of the given territory. The Adjustment Administration thus accepted the responsibility of developing an arrangement for each market such as would conform to the new policy rather than permitting certain groups to formulate an agreement which would then be imposed by license upon the other distributors and through them upon the producers of the given territory.[25]

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[22] See Chap. XII.

[23] The Chicago license was almost immediately brought to a court test by the action of two dealers who sought to enjoin the Secretary of Agriculture. On August 29 a decision was handed down which upheld the constitutionality of the act and declared the regulations and license reasonable and valid.

[24] Most of these violators had failed to maintain the schedule of resale prices.

NEW POLICY AND MORE LICENSES

In notifying the 13 markets whose agreements were to be terminated on February 1, the Adjustment Administration made it plain that it would "exert every effort to sustain the present agreement prices to producers" but that nothing further would be done to enforce the retail prices stipulated in the license. Producers and distributors appeared to feel that the licenses afforded them a considerable degree of protection, even though not fully enforced, and to be desirous of continuing them pending the time when new marketing agreements could be worked out.

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[25] A conference in which the staff of the Dairy Section of the Adjustment Administration discussed issues of policy with the dairy industry specialists from various agricultural colleges was held in Washington during the first week of January 1934. J. H. Mason of the Des Moines Co-operative Dairy Marketing Association succeeded Dr. King as head of the Dairy Section on Dec. 16, 1933. This was a temporary appointment pending the time when Mr. Mason should take up his duties as head of the Bank for Co-operatives at Omaha. On Mar. 10, 1934, A. H. Lauterbach, formerly manager of the National Cheese Federation, took over the work. He resigned on July 1, 1935, and was succeeded by E. W. Gaumnitz, formerly assistant chief.

Hence all of the licenses, with the exception of Chicago,[26] were continued in force. When proposals for new agreements proved unacceptable to distributors, licenses came to be the exclusive machinery for carrying out the fluid milk program.

Following the drafting of a new license for Chicago, the Adjustment Administration proceeded with the revamping of licenses for other markets as well as the completion of those already pending for cities which had not had marketing agreements. Five new licenses were made effective in February, seven in March, six in April, three in May, four in June, twelve on July 1, and scattered ones thereafter until by the end of the year 1934 milk marketing licenses under the new policy covered 50 milksheds in all parts of the country. Since it was necessary not only to adapt each license to the peculiar situation in the market to which it was to be applied but also to adjust to changing conditions, the process of amendment of these licenses continued throughout the year and some of them underwent considerable modification even after being recast to conform to the major features of the new policy.

Besides abandoning the practice of naming resale prices, the new policy promised a shift from the mere marketing control approach to a production control approach to the whole fluid milk problem. "Fluid milk marketing agreements and licenses," the AAA stated, "will be used in a modified form and as a supplement to the general program of dairy production adjustment. Fluid milk markets have been threatened with demoralization because of acute price-cutting due to excessive supplies. . . . Maintenance of high retail prices to consumers, even with the enforcement powers of the Administration, has proved impossible in such circumstances."[27] Acting on the belief that prices in the butter, cheese, and other manufactured products markets would have to be raised through a program of production control, or that milk prices would have to be allowed to establish an equilibrium with these prices on a somewhat lower level than that then obtaining, the AAA worked out the details of a production control program based on a processing tax and benefit payments to dairymen who agreed to reduce production by 15 per cent.

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[26] The action in Chicago was determined by the peculiar difficulties of that market. With the opening of the new year, dealers attempted to reduce the price for Class I milk to $1.40 per hundredweight. This precipitated a milk strike which became effective on January 6 and lasted five days, until a truce was arranged by the municipal authorities. In order that the Pure Milk Association might have a free hand in attempting to get, through its own efforts, a price higher than the government was ready to establish, the Adjustment Administration on January 8 terminated the license. The government was ready to issue a new license immediately on the basis of a price of $1.70 per hundredweight and to undertake to enforce it, but was not willing to accept a price established by the Mayor's arbitration committee or any other agency and take the responsibility for enforcement. It was not until February 5 that a price basis mutually acceptable to the Adjustment Administration, to the producer association, and to the Chicago distributors could be arrived at and embodied in a new license.

Before discussing the outcome of this move, we need to note certain other features of the new policy. There was a turning away from the idea of using fixed geographic boundaries to delimit a milkshed within which it was attempted to maintain an artifically higher price for a preferred group of fluid milk producers. As against this it was insisted that the prices within the metropolitan areas should be economically adjusted according to transportation charges, extra cost of meeting health requirements, and any other justifiable differentials. Thus the market boundaries would establish themselves on an equitable economic basis so that the returns from fluid milk use and use for manufacturing would be in balance at the boundary of the milkshed. If this were accomplished, the use of the base-rating plan as a device for restricting the number of those who might participate in the higher price market would of course disappear. At first, the proponents of the new policy were disposed toward the elimination of the base-rating system not only in these restrictive manifestations but also as used for its original purpose of equalizing seasonal supplies. With the progress of time this position was moderated, and the base-rating plan was abandoned in only one or two of the licensed areas.

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[27] *AAA Press Release No. 1543-34.* These views were very fully elaborated by Secretary Wallace in an address at Madison, Wis., on Jan. 31, 1934. *AAA Press Release No. 1727-34.*

There was also considerable revamping of administrative arrangements, which put a responsible appointee of the Adjustment Administration in each license area as market administrator and proposed to supplement his activities by the setting up of an actively functioning local committee, supervisory in character and designed to have representation of the public as well as the producer and distributor groups. The introduction of a market administrator system contributed toward the better effectuation of the terms of the licenses. The task of such a man, however, is one of extreme difficulty and the finding of adequate personnel even for 50 markets has proved well-nigh impossible. Likewise, the development of representative and helpful local committees made almost no progress. While it was asserted that a more active participation of local interests in the formulation of the terms of licenses would be sought, the new licenses were in fact more nearly imposed from outside than were the old. This was especially true of the early licenses under the new policy.

On March 21, the production control plan was announced[28]—to be submitted to the dairy producers of the country in a series of regional conferences. In presenting it to such a meeting at Philadelphia on April 2, 1934, Secretary Wallace said:

> . . . We have sought from the first to help the fluid milk farmers with marketing agreements and licenses establishing prices. We have found after experiment that the marketing agreements and licenses for the fluid milk regions were powerless to maintain fair prices to farmers if the general dairy market dropped out from under them, leaving them without support. This was because the pressure of unlimited supplies of milk from surrounding surplus regions forced fluid milk prices down. Of course, because of advantages of location, costs of handling, sanitation, delivery and other charges, fluid milk prices normally are higher and should be higher than that of milk sold for manufacturing. But within regions there is some normal relationship. And with experiment our dairy people have felt the need for controls over volume to sustain the general dairy industry, including that part of it engaged in fluid milk production.
>
> All these reasons impelled us to offer the dairy industry proposals which we thought might reasonably be considered in the light of the existing situation and that which may be in prospect. We thought it might be wise to put a restraining influence upon production, so as to retard it to about the seasonally reduced levels of the past few months. We propose to permit the dairy farmers to organize themselves into county production control associations, and with financing by processing taxes to pay benefit payments to those agreeing to co-operate. We believe that, if adopted, the plan has flexibility enough to permit future expansion of production in step with any increase in consumer purchasing power which may later take place. Adoption of the plan is a matter for the dairy farmers to decide after adequate discussion of this and other possibilities.[29]

Numerous meetings were held for the discussion of this proposal, but no such aggressive attempt was made by the

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[28] *AAA Press Release No. 2175-34.*

[29] *AAA Press Release No. 2266-34.*

AAA to "sell" it to the producers as had been made in the cotton, wheat, and corn-hog programs. A great deal of opposition developed and, in the end, the dairy production control proposal was dropped. Thereafter, the efforts of the Adjustment Administration in this field were devoted to the process of further revising licenses already in force and of completing and putting in effect licenses for additional markets in conformity with the new policy, undergoing such modification as it did in the process of time.

The process of evolution was influenced also by the trend of judicial decisions being handed down in cases under the Agricultural Adjustment Act and the National Industrial Recovery Act. Although upheld in several minor courts, there were also a number of adverse decisions (see Chapter XII, pages 276, 279, 285). The courts in the latter cases have held that in many, although not all, of the markets covered by licenses, business is intrastate in character and thus not within the regulatory power of the federal government. Second, they have held that the purposes for which licenses were authorized in Section 8 (3) are not co-extensive with the purposes for which marketing agreements are provided by Section 8 (2) but must be limited to matters covering trade practices which tend to lower or prevent the raising of producers' returns. Finally, the decision of the Supreme Court in the Texas oil case under the NRA code authority by implication raised a question as to whether the procedures followed by the Adjustment Administration in connection with marketing agreements and licenses would be held valid in the higher court. This doubt was further increased by the adverse decision of the United

States Supreme Court in the Schechter case under the live poultry code.[30]

In several of the markets, violations increased to large proportions and licenses became virtually inoperative in the light of unfavorable court decisions. As a result, a series of cancellations began early in February which by July had removed 16 licenses from the active list. Many of these involved cities in which the interstate character of the business was most seriously in question, such as Baltimore, Indianapolis, Oklahoma City, Fort Worth, and Los Angeles. One new license (Tucson, Arizona) became effective April 16, and efforts were then under way to work out the final details of a workable arrangement for a few other markets.

Meanwhile, however, the AAA had come back to Congress with various proposed modifications of the law in the form of perfecting amendments designed both to permit procedures which experience had indicated were desirable and to meet difficulties revealed in the process of adjudication or implied by the position of the Supreme Court in the Schechter case. Inasmuch as the drafting of new agreements or the revision of the old will have to be in conformity with the amended act (approved Aug. 24, 1935), the last few months have been a period of marking time or indeed of some recession owing to difficulties of enforcement or voluntary co-operation in the face of a highly ambiguous legal situation. Under the amended law, it would seem that we could expect a process of settling down in the somewhat curtailed area to which efforts are now confined. It seems probable that a few even of the 34 agreements in effect on September 1 may be terminated shortly.

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[30] See p. 279.

There has been a general disillusionment on the part of those who assumed that any arrangement desired by a dominant group in the market could be imposed on the rest and made effective. It has become increasingly clear that unless the provisions of a license are not only economically sound but essentially acceptable to a very large percentage of both producers and distributors, and reasonably well supported by public sentiment, it is useless to expect enforcement. The situation is not essentially different from that which arose in the aggressive period of development of commodity marketing associations in the early 20's. Many large co-operative associations had "legally binding contracts" whose terms were specifically authorized in minute detail in special statutes and had an almost unbroken line of favorable decisions in both lower and appellate courts, yet they proved unenforceable as a practical matter. This was simply because the number of persons who found it to their advantage to breach their contracts was so large that the mere labor and cost of policing, litigation, and securing compliance with court orders or judgments imposed an impossible burden.

It would seem probable that the program in its further development under the amended act may become the agency through which a process of economic and social education can be carried on which will evolve arrangements in the different markets which will be largely self-enforced because they have grown out of the experience of the men who are parties to them. When this is done, the terms of the license become a marketing *agreement* in a very direct and effective sense and not in the Pickwickian and trouble-breeding sense which characterized the 15 agreements of 1933. Once this condition can be arrived at through the machinery of a license, the results should be put in the form of a marketing agreement to be signed by the parties who have helped to evolve the terms, thus evidencing their good faith and estopping them from subsequent evasion of the terms mutually agreed upon.

EVAPORATED AND DRY MILK AGREEMENTS

It was originally contemplated that agreements national in scope should be worked out for dry milk and evaporated milk and for butter, cheese, and ice cream. Proposals were received and public hearings held on national agreements for ice cream and butter respectively. There were also suggestions for agreements covering several types of cheese and informal conferences with these interests, but no more tangible developments.

Proposals for a marketing agreement covering evaporated milk manufacturers were advanced early and presented vigorously because of the heavy and increasing receipts of milk at evaporating plants in the face of heavy storage stocks. This situation had fostered the development of competitive practices which were regarded as unfair and it was sought to stabilize marketing conditions through an agreement under the Adjustment Administration. This agreement (effective September 9, 1933) was between the Secretary of Agriculture and 36 manufacturers of evaporated milk (95 per cent of the product),[31] "and by and between each of the manufacturers one with the other" (a form since discarded in the practice of the Adjustment Administration). It bound the manufacturers to observe a schedule of minimum prices to producers set forth in a detailed exhibit attached to the agreement. These prices were adjusted according to the six manufacturing areas and were on a sliding-scale based on butter and cheese quotations. The second exhibit provided two schedules of maximum and minimum prices at which manufacturers would sell the finished product.[32] One schedule covered the Far Western states (with adjustments for the several states on account of freight rate differences) and the other the rest of the country. A third exhibit set forth trade practice rules designed to prevent evasion of the spirit of the price schedules or other unfair competition.

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[31] The remainder was represented by five small firms, two of which subsequently signed.

Administratively, the evaporated milk agreement was to be largely self-enforced by the signatories themselves through a "manufacturers' committee" which should appoint and direct a managing agent subject to the approval of the Secretary of Agriculture. Except for the fact that three of the producers were co-operatives, the only connection of producers with this agreement was through a producers' committee nominated by the National Co-operative Milk Producers' Federation and "such other producer agencies not members of said Federation as shall sell milk to the manufacturers." This committee was given an advisory role with reference to the application of the formula used in establishing prices paid to producers.

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[32] "Maximum and minimum wholesale prices, 15 cents [per case] apart, were specified by the agreement, the former technically 'to protect the consumer,' the latter to prevent unfair price cutting. Actually this spread was provided to allow unadvertised brands to be sold for 15 cents less than advertised brands. This merely perpetuated a development within the industry. The smaller manufacturers had been able to make sales only by underselling the makers of the advertised brands. Until 1932-33 they had commonly undersold by as much as 25 cents. But at that time the larger manufacturers had begun to meet these cuts and a price war had developed, with the result that the spread almost disappeared for a time. Not all of the smaller manufacturers were satisfied with the 15-cent spread set up by the agreement. . . . Several companies have since threatened to withdraw unless the spread is widened. The Dairy Section has made an analysis of the effect of this spread upon the relative volume of the business in advertised and unadvertised brands, but the results are not conclusive. Apparently the larger processors have consistently sold their advertised brands at the maximum price; but some of them have shifted more milk into unbranded or 'second label' products." Black, *The Dairy Industry and the AAA*, pp. 364-65.

No license was issued in connection with this agreement. Some administrative difficulties of enforcement were encountered, but with the support of the Adjustment Administration a reasonable degree of compliance was secured and the agreement operated successfully during the closing of 1933 and through most of 1934. Evaporated milk prices showed a marked increase as soon as the producers got together to formulate the agreement and these advances were maintained after the agreement was put in force.[33] How much of this advance is to be attributed to the agreement it would be impossible to state. On January 10 this agreement was amended to increase the maximum limits of the schedule of wholesale prices by 20 cents per case and to eliminate certain points at which surcharges could be added to the existing schedule.

This amendment was to remain in effect only until January 31 or such extended time as might be necessary for the preparation of a new marketing agreement. This new agreement was tentatively approved by the Secretary of Agriculture on March 20 and submitted to the industry for signing. Its principal change consisted in substituting the posting of open prices in lieu of the maximum and minimum price schedules provided in the old agreement. It also provided for check testing and weighing of milk by producers' representatives and the use of licenses if desired by the industry. It was signed by only about 30 per cent of the producers, and several extensions of time were granted in the hope that more general support could be secured. During March and April it was signed by other manufacturers, thus bringing the total up to 50 per cent by number and 75 per cent by volume, but several of the new signatories introduced provisos which were "not in line with the policy or position of the Administration or not deemed essential to the completion of the agreement."[34]

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[33] Non-signers created some difficulty by underselling and there was also some violation by signers. Enforcement proceedings were begun in a few cases but all were disposed of without resort to litigation.

Since the Adjustment Administration was not willing to institute such an agreement, with its added license requirement, unless it had the approval of a majority of manufacturers, an order was issued on May 18 terminating the old evaporated milk agreement as of May 31. Most of the manufacturers had regarded the agreement as having a highly desirable stabilizing influence and, when faced by the alternative of losing the agreement altogether, they met in Chicago on May 22 and came to an accord[35] so that the new marketing agreement and license were made effective by the Secretary on June 1, 1935. Besides the substitution of open-price posting in lieu of maximum and minimum schedules for the finished product and the addition of a license, the new agreement somewhat increased minimum producer prices in the Western, Northwestern, and California areas.

The situation with reference to the dry milk industry was in general similar to that of evaporated milk manufacturers, and the agreement followed much the same lines. Co-operatives occupied a considerably larger place among the manufacturers of this product and thus secured fuller representation through the manufacturers' committee which was provided. No schedule of producers' prices was provided, since dry skim milk is entirely a by-product.

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[34] *AAA Press Release No. 2991-35.*

[35] "In addition to the demand for manufacturers to continue the agreement and reinforce it by a license, the officers of the producers' committee under the agreement declared in a statement to the Agricultural Adjustment Administration that cancellation of the agreement without replacement with another one would throw the industry into a very dangerous condition and that in such a case the producers would probably be injured considerably." *AAA Press Release No. 2237-35.*

The outstanding feature of the agreement was that it established an "open-price" arrangement under which "each manufacturer agrees to file with the Secretary and with the manufacturing agent . . . a complete list of his selling prices," which may be modified from time to time as he desires, subject to disapproval by the Secretary. The price structure, however, is to be covered by an elaborate system of classification of prices and price differentials for both dry milk sold for human consumption and that sold for livestock feeding. These are provided by exhibits attached to the agreement. There are also detailed trade practice rules, differing in the case of the two types of market outlet. This agreement as a whole comes closer to the type of NRA codes than to the majority of AAA marketing agreements. It is regarded, however, as having had something of a beneficial tendency on producers' returns by eliminating wasteful practices in the industry.[36] It has not given rise to any serious enforcement problems.

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[36] On Jan. 18, 1935 it was announced that evaporated milk and dry skim milk had been added to the list of food products purchased for distribution to families on relief rolls. A total of 37,618,800 pounds of evaporated milk and 3,081,250 pounds of dry skim milk was to be supplied under contracts awarded on the bids of the various manufacturing companies.

CHAPTER XI

ADMINISTRATIVE PROCEDURES AND PROBLEMS

While the chances that any undertaking such as the Agricultural Adjustment Administration will accomplish its objectives depend in large measure on the economic issues involved, they likewise depend to an important extent on the skill with which its administrative organization has been worked out and upon the adroitness of the operative procedures followed. In preceding chapters we have had occasion to make incidental reference to a number of particular matters lying within this field. We shall now undertake a more comprehensive and systematic consideration of the operative arrangements and administrative problems under the marketing agreements and licenses.

ORGANIZATION OF CENTRAL ADMINISTRATIVE AGENCY

In Chapter II we noted the general organization of the AAA as originally set up and continued until the close of 1933 (page 25). This was characterized by a dual structure under a Production Division and a Processing and Marketing Division, the latter being in the main responsible for the formulation and administration of marketing agreements and licenses. In that chapter also we showed (page 27) the administrative reorganization which was effected early in 1934 under which the Processing and Marketing Division was merged with the Production Division in a single Commodities Division. Under this arrangement the former Chief of the General Crops Section, which was the chief center of marketing agreement activity, except for dairy products, became Assistant Director of the Commodities Division in charge of marketing agreements and codes, and General Crops (first called Special Crops) was continued as one of the sections of the Commodities Division. During the first year of the AAA some marketing agreements were effected under other commodity sections, namely the Wheat, Tobacco, and Rice Sections. Throughout the year, also, the Dairy Section devoted the major part of its attention to the administration of fluid milk marketing licenses, although collateral attention was given to the formulation of a production control program which never became effective.

Early in February 1935 a second reorganization of the Adjustment Administration was effected. Instead of having 14 sections, each with a chief responsible to the head of the Commodities Division, who in turn was an assistant administrator of the AAA, this new set-up divides the Commodities Division into six smaller divisions, each with a director who sits on a newly created "Operating Council"[1] which constitutes a sort of cabinet for the Administrator. One of these divisions covers only cotton; a second covers corn and all kinds of livestock; a third deals with wheat and other small grains; a fourth embraces tobacco, sugar, peanuts, and rice; a fifth deals with commodity purchases, agricultural labor, drought, and other emergency programs; and the sixth with dairy and other marketing agreements and licenses, general crops, and field investigation. This division is under the direction of J. W. Tapp, who had been chief of the Special Crops Section under the first scheme of organization[2] and, as assistant director of the Commodities Division under the second organization, had been in charge of marketing agreements and codes.

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[1] Other members of this council (besides the Secretary of Agriculture and the Administrator of the AAA) include the Chief of the Finance Division, the Chief of the Program Planning Division, the Consumers' Counsel, and the Solicitor of the Department of Agriculture. The latter took over the work of the former Legal Division of the AAA, which thereby became integrated with other legal work of the Department of Agriculture as a whole. This development had considerable significance for the carrying out of the marketing agreement program and will be discussed further in this chapter and more particularly in the one which follows.

The several changes which have been effected in overhead organization of the Adjustment Administration have neither interrupted the operation of the marketing agreement program nor materially modified the actual content of marketing agreements and licenses except as certain early types of agreements have been discontinued. They have, however, had considerable influence in expediting the procedures under which agreements and licenses are handled.

Under these evolving schemes of administrative organization, staffs of specialists have been built up to consider proposals for marketing agreements as they came forward from processors, distributors, and growers' organizations in the field, to arrange for hearings, to assist in the drawing up of agreements and licenses, and to supervise and administer them after they are put in operation. A staff of ten specialists in the marketing of horticultural crops was built up in the Special Crops Section during the organization period in 1933, and it has since grown to 28 in number. Similar specialists in the Dairy Section have worked continuously on marketing agreements and licenses, and members of the Tobacco, Rice, and Wheat Sections have given part of their time to this line of work, although their major attention has been directed toward production control programs. In the task of developing and supervising agreements and licenses, the staffs of the Consumers' Counsel and of the Legal Division have also participated.

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[2] After the first three months, when H. R. Tolley was in charge.

While the seat of these activities is in Washington and many of the conferences and hearings are conducted there, numerous meetings also have been held in the producing areas and, before any agreement is consummated, public hearings are held at a strategically located point or points in the affected territory. Both in connection with such meetings and in the prior study of the problem or subsequent observation of the operation of the agreement or license, most members of the Washington staff spend a considerable part of their time in the field.

Such intermittent contacts, valuable though they are, have not been regarded as sufficient to insure a satisfactory working out of the marketing agreement plans. Even the simpler agreements marked new departures for processors, distributors, and producers in all except a limited number of cases where analogous ventures had been undertaken previously by co-operative associations or clearing houses. It has been necessary therefore to carry on a considerable educational campaign while an agreement was being worked out, and after it was put in operation to have someone rather continuously on the ground at least during the active shipping season to observe its workings under practical operating conditions. It was important to acquire first-hand knowledge of the character of the problems that arose, to straighten out misunderstandings which interfered with successful operation, and to advise Washington headquarters on problems of enforcement and the desirability of modification through amendment or of changes which would bring about improvement in case a new agreement were to be drafted.

To meet these needs, the Administration early designated (August 8, 1933) a member of its staff to act as "field representative" in the California area, where several marketing agreements were being evolved. In the following October a similar appointment was made in the territory where the very complicated Northwest deciduous tree fruit agreement was being brought into operation. The obvious need of such service and the beneficial results derived from the early use of permanent representatives in the field led to the increase of this staff until on August 1, 1935 there were four representatives in California, one in the Pacific Northwest, one in Texas, one (part-time) in Colorado, three in Florida, one in Virginia, and one (part-time)[3] in New York.

Besides these field representatives of the Special Crops Section,[4] there was also one field representative from the Rice Section during the time that commodity was being handled under marketing agreements. In the dairy marketing field a considerable staff of field representatives has been built up. But events there have followed a somewhat different course, and we will defer its discussion until we can complete our picture of the operative situation with reference to special crops agreements. To do this we turn now from our consideration of the Washington staff and field representatives of the AAA to a brief examination of the local administrative agencies which have been set up.

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[3] These part-time employees are members of the experiment station staffs in their respective states. There are also three men designated as consulting specialists. They are located in Oregon, New Jersey, and Georgia respectively and give most of their time to other positions, but are subject to call for consultation on special situations which develop from time to time.

[4] As indicative of the degree to which administration is being decentralized, we may note that the field work in the Pacific Coast states has now been organized under permanent branch offices at Berkeley, Calif. and Portland, Ore. These offices constitute headquarters not merely for the field representatives and consulting specialists, but also for such representatives of the Enforcement Section as may be assigned to these areas during periods when marketing agreements are in active operation. Furthermore, an economist from the Economic Analysis Unit of the Special Crops Section has been attached to the Berkeley office in order that the problems of this section may be dealt with promptly by one closely in touch with local conditions and able to keep local markets under constant observation. In most other sections, operations under marketing agreements are too seasonal in character to make it practicable to establish such a permanent branch office. In Florida, however, it would seem that such a development might take place if the citrus agreement is brought back into operation and other fruit and vegetable agreements continue in force.

SAFEGUARDING LOCAL AUTONOMY

From the beginning of the Agricultural Adjustment undertaking the point has been stressed that the act is highly democratic in spirit and intent. In its production control programs, the Adjustment Administration has sought to elicit the voluntary co-operation of the rank and file of the farmers through educational campaigns and to rely in the carrying out of these programs on the regulatory or self-governing force of local committees democratically chosen. The same general purpose has animated the administration of the marketing agreement phase of the work. It was hoped that the minds of processors, distributors, and producers would come together on the points of an arrangement which would be mutually satisfactory. On the basis of this common understanding and support of a program in whose formulation they had themselves taken an active and ideally a dominant part, it was intended that they should set up a representative control body through which it could be self-administered. The legality of the procedures which were adopted in pursuance of this idea was by implication called in question by the Supreme Court's decision in a case involving the NRA (see page 287). This has resulted in the amendment of the Adjustment Act and changes in administrative procedure. Before discussing these developments, however, we should note what were the administrative arrangements under the act from May 1933 to August 1935.

In the earlier and simpler set-ups[5] worked out with small groups of processors and distributors, a control board often consisted of a sales manager or other executives from each of the signatory concerns or was made up of persons "selected by" such processor or distributor groups. When large numbers of small handlers were involved, their representatives were often chosen by election, sometimes with each handler casting a single vote and sometimes with voting weighted according to volume of business. As greater producer representation came into vogue, grower members were selected, generally by popular vote, and frequently on a district basis.[6]

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[5] A few agreements, notably the price bargaining agreements for several types of tobacco, were so simple in character as not to require any control committee or other local supervisory agency. All that was required in the administration of these agreements was a simple check upon compliance with the terms of the agreement as to price and volume. This was made by the Adjustment Administration staff in Washington.

[6] Several agreements provided that if a member was not appointed or elected by his respective group within a stipulated period after the agreement became effective (such as 15 days), the Secretary of Agriculture should then appoint someone to the place. The appointive power has been extended beyond this point in only one case—one which involved a peculiar and difficult set of circumstances. Under the original Florida citrus agreement, a certain amount of friction had developed with reference to the basis of membership on the control committee. In the proposed new agreement, the AAA sought to get a control committee of 13 members, 7 of whom were to be elected by growers and 6 selected by shippers. This plan met with approval at a hearing in Florida, but at a subsequent conference in Washington in September doubt was expressed as to whether the grower elections could be held promptly enough to get the agreement in operation by the opening of the shipping season. Underlying this reason, there was probably some apprehension on the part of shippers that the members of the committee thus elected by growers might be too '"radical" for the satisfactory functioning of the committee. They accordingly requested the Secretary to appoint the whole committee and for this purpose furnished him a list of 50 persons eligible to the office. From this list the Secretary ap-

The role of the Adjustment Administration in Washington and its field force was to be that of furnishing advice (either in the formulation of the agreement and license or in their subsequent administration), investigating complaints, rendering service in facilitating this scheme of industry self-government, and lending the strong arm of governmental authority in enforcing the plan when such aid was called for by the industry's control group. This intention was set forth in the statement of general policies with reference to marketing agreements issued by the Administrator on October 24, 1933 as follows:

> Agreements shall contain provisions setting up a supervisory body to aid in the functioning of the marketing agreement, to determine matters of discretion and disputes thereunder. . . . The provisions shall be so drawn that all elements of the industry, irrespective of their membership in trade associations, shall be adequately represented. . . . The Secretary shall retain such supervision and control over the action of the supervisory body as he deems desirable, and may designate agents to keep him advised thereof and to perform such functions as he may require.[7]

In the actual working out of a marketing agreement program, considerable pains have been taken to distribute representation on supervisory bodies equitably between large and small shippers and processors; among proprietary concerns, co-operatives, and "independents"; and among competing geographic areas within a more com-

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pointed a control committee of 13, and their names were set forth in the new marketing agreement. In spite of the fact that the Secretary's appointees were all chosen in a manner and from a list suggested by the Florida interests, his selection did not meet with approval and the committee was never able to put the "agreement" in operation. This outcome strongly suggests that no method of appointment could be successfully substituted for popular election.

[7] *Statement of General Policies and Model Drafts for Marketing Agreements and Codes of Fair Competition,* Form M-14, AAA, p. 3.

prehensive district covered by an agreement. A further question, however, arises as we pass from marketing agreements to licenses. When the Secretary of Agriculture invoked his licensing power, he caused a marketing program to become binding on persons who were not parties to formulation of the agreement. Much the same situation will obtain under the new "orders" (see page 289), and it raises the question, "Shall these non-signers to whom its terms are extended be given the same democratic representation on supervisory bodies?" In the early days of the AAA, several situations developed in which both membership on control boards and eligibility to vote for such members were limited to signers of the agreement. It was not unnatural that those who had labored in the perfecting of an agreement should be disposed to exclude from a voice in administration those parties who had been unwilling to participate in the group undertaking on a voluntary basis. Experience indicates, however, that a more harmonious and effective carrying out of the agreement is likely to be brought about under a principle of universal suffrage and eligibility to office. Recent practice, therefore, has been to open the privileges of voting, and in most cases that of membership on the control committee, on equal terms to all licensees, and such restrictions as appeared in earlier agreements have largely been eliminated through the amendment of old agreements and licenses or the substitution of new ones. Presumably the same practice will be followed under Secretary's orders.

In Chapters VI to IX we became acquainted with the actual provisions made for control boards, proration committees, appraisal committees, and similar supervisory bodies set up under the various marketing agreements. In the main, it may be said that these devices have demonstrated their feasibility and efficacy as administrative machinery although, naturally, many difficulties have been encountered. Though met in part by the promulgation of formal regulations or through mere admonitions from the Adjustment Administration in Washington, or by the stimulative or restraining influence of its field representatives, they still present administrative problems. Chief of these difficulties probably is the question of how to get the proper representation and balance of power in the local supervisory agencies. This issue is so large that we shall devote a separate section of this chapter to its consideration. First, however, let us note three problems that arise when local supervisory bodies, however constituted, are used in the administration of marketing agreements. These are: (1) failure on the part of the local agencies to exercise fully and aggressively the duties incumbent upon them; (2) exceeding of their authority by local officers and control boards, sometimes through uncertainty as to the precise boundaries of their powers; (3) failure on the part of such agencies to follow sufficiently formal procedures and keep (and transmit to Washington) an adequate record of situations with which they have dealt and of their reasons for action taken.[8]

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[8] A further problem should be mentioned. This concerns the financing of the local supervisory body. Funds for this purpose are provided by assessments levied by the control committee or similar body on the commodity. This becomes a burden on the processors or handlers or is a deduction from the growers' net returns, its incidence depending on the commercial situation and the working arrangements of this particular agreement. In any event, it creates an issue between the natural desire to keep such contributions down to a minimum and the desire to have service at a maximum. Some committees employ full-time salaried managers and special legal, accounting, and other service as needed. The use of field representatives of the Commodity and Enforcement sections tends to reduce the need of locally employed staffs.

Most agreements stipulated that control committee members should serve without pay, and where per diems have been allowed they have ordinarily

Failure of a local committee to perform is ordinarily due either to an unfortunate selection of membership or to the preoccupation of the members with their private affairs. The very effort to pick men of outstanding ability sometimes results in getting members who, however keen their interest in the work, find the duties of the office imposing the greatest demands on their time just when they are most occupied with the demands of their own business. Such difficulties, however, may in general be met by adequate field service supplied by the Adjustment Administration and by the building up of a proper staff of assistants to handle routine work in the control committee's office.[9] Much more serious is the type of failure

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been moderate in amount. Paid managers and other employees have usually been taken over at the same rate of salary as they had been receiving in other employment. The few cases where the Adjustment Administration has demurred at committee expense have practically all concerned attorneys' fees which they regarded as exorbitant. Administrative Order No. 2, issued June 1934, provided that each control committee should "submit to the Secretary for his approval an itemized budget of its estimated expenses and an equitable basis upon which funds necessary to support such budget shall be contributed by members of the industry." In general, the budgets submitted have been deemed reasonable in amount, although in one case Adjustment Administration officials considered a proposed budget insufficient to meet the probable expenses of efficiently carrying out the agreement, and in one or two cases they suggested that the original proposal be revised downward. In some cases, difficulties have been encountered in collecting the necessary contributions from licensees or even signatories to the agreement (see Chap. XII). In general, however, the levies have been paid willingly and have been more than sufficient to meet the expenses actually incurred so that refunds have been made after the close of the marketing season.

[9] In the school of experience various lessons are being learned as to how these duties may be simplified and the tax on members' time lightened. For example, the area of the Florida celery marketing agreement included two districts which center at the towns of Sanford and Sarasota, approximately 125 miles apart. The regular weekly meeting of the control committee was scheduled at a third town, Lakeland, about half way between these two, which made it possible for members to leave their homes about noon, attend the meeting, and return at a reasonable hour. However, when only routine business was to be transacted or a proration was to be settled which did not involve acute issues or wide divergence of opinion, committee members from the northern district

to perform which is due to loss of interest on the part of committee members who at the start were enthusiastic over the possibilities of the market adjustment device but who have subsequently become indifferent. Such defection may either be the result of the return of a better price level or because committeemen have been disappointed with the ability of the agreement to produce swift and spectacular results. Or members may become irritated by some of the difficulties encountered.

As to action by committees outside the bound of the authority conferred on them under the agreement or license, the remedy is evident. It is necessary that the Adjustment Administration in Washington or some representative in the field be promptly informed as to such a development in order that the matter be called to the attention of the members or officials of the local board. If the infraction is due to ignorance or oversight, it will be quickly set right. If it reveals a point at which the existing agreement or regulations interfere with necessary action, it will start a constructive discussion of the difficulties and the means of remedying them through amendments or new administrative rulings. In any event, this issue merges into our third problem, namely that of securing full and prompt information at Washington as to developments in the field.

Local administrative boards show wide differences in quality of membership, have chairmen of varying degrees of administrative competence, usually appoint qualified and experienced secretaries and clerical help, but sometimes are very inadequately manned. Hence they show

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assembled at Sanford and those of the southern district at Sarasota and the two groups were connected by long distance telephone with a loud speaker attachment in each committee room. Actions taken at such meetings were ratified at the next assembled meeting of the committee.

a wide range in the promptness and thoroughness with which they keep Washington posted as to their activities and in their compliance with provisions of the agreements requiring that their acts shall be subject to the approval of the Secretary of Agriculture.[10] The requirement that local decisions be acceptable to the Secretary is common to all agreements, but it takes two general forms: (1) that actions of the local supervisory body shall not become effective *until approved* by the Secretary; and (2) that such action, though immediately effective, shall be subject to the right of the Secretary to *disapprove* at any time. If, in the latter case, there is any laxity in reporting to Washington, conditions may be brought about which, if the Adjustment Administration had been informed, would have been prevented. It should be remembered also that sometimes, even though difficulties in the field were reported to Washington, action was delayed at that point with unfortunate results. In the former, action may be needlessly delayed, or, if taken without approval, may be subject to attack at any time.

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[10] The procedure to be followed by local authorities in their relations with Washington was laid down in Administrative Order No. 1 (June 1934). This was further elaborated on Feb. 25, 1935 through the Secretary's approval of Administrative Order No. 8. This order requires that every official act of the supervisory body shall be in writing, signed by the chairman, secretary, or other properly designated person; that full and accurate minutes shall be kept of all board or committee meetings; and that the rules and regulations covering the conduct and procedure of the supervisory body shall be in writing, signed by the chairman, secretary, or other designated person. Five certified copies of every order or other act of the supervisory body and of the minutes of each of its meetings shall, at the same time that they are filed in the local office, be forwarded to the appropriate section chief in the AAA at Washington.

It is obvious, however, that important and salutary as this rule may be, it does not obviate the need for a personal representative in the field. There still remains the possibility that some control boards or officials may be lax in complying with the requirements of the administrative order, and the services of the field men may be important in stimulating and checking up their activities in this regard. But even if reports are full, accurate, and prompt, they do no more than inform the Adjustment Administration officials after action has been taken. In a large proportion of cases, it is much more important that these officials know in advance of situations that are developing, attitudes that are forming, and the courses of action which are being contemplated if they are to fit their own activities into such a developing program or, where need seems to arise, interpose either their influence or their authority to shape action in a different direction.

With so much that is experimental being worked out under the agreements and licenses, it is administratively out of the question to have Washington in the dark as to precisely what is going on in the local areas. It is not less unfortunate if persons vested with local responsibility are left to devise their own courses of action and to evolve their own interpretations of the law and the terms of the agreement and license in ignorance of or uncertainty as to legal and administrative interpretations of their rights and duties. In some quarters it is felt that the situation has not been fully met but that further decentralization should take place so that more of the members of the Adjustment Administration staff would be in the field and fewer in Washington. An important agreement with a continuous or long marketing season requires the full time of one man and it is probable that no individual can do full justice to more than two agreements simultaneously. Of course, some shipping seasons are quite brief, thus enabling one man to handle several agreements successively.

Finally, it is to be noted that the greatest administrative short-coming from the standpoint of control committees and local participating agencies is that matters on which they feel the need of prompt and informed decision at Washington are often delayed in consideration, become entangled in red tape, or are decided by persons too much out of touch with exigent local situations. Two conditions need to be met: (1) decentralization of administration so as to bring a professional staff closer to the scene of action; and (2) placement in local branch offices or on tour in the field of responsible officials who can make decisions or have prompt contact by telegraph or telephone with the ultimate authority at Washington. This is the surest and in fact the only way of getting an administration which is sufficiently speedy, flexible, and technically competent to handle the distributive problems of a perishable commodity.

CO-ORDINATING CENTRAL AND LOCAL AGENCIES

We have already noted (page 238) that the role of field representatives of the AAA is advisory to the control boards in so far as they make suggestions on procedures which conform to the law, the administrative rulings, and the terms of agreements and licenses.[11] But they are supposed to refrain from any effort to influence the control committee on matters of general marketing policy or its course of action in specific situations.

Under the course of administrative development which we have been tracing, a local supervisory body was entrusted with the actual conduct of affairs, subject to the veto of the Adjustment Administration.[12] The AAA staff, both in the field and at headquarters, acted in an advisory role to the local supervisory body and likewise to the Adjustment Administrator, the division heads, and the Secretary, subject, however, to such approval or disapproval as they might express. While this procedure corresponds to the democratic ideal of local autonomy instead of bureaucratic domination, it is not accepted throughout the Adjustment Administration as being without question the most satisfactory scheme of organization. In some quarters the view is held that the field men should become responsible representatives of the Secretary in local areas, clothed with responsibility for carrying out the agreements and licenses in conformity with the Adjustment Administration's interpretation of the law and with its administrative rulings and general policies.

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[11] Besides these activities in connection with agreements already in operation, the field representatives consult with growers, distributors, or processors in their respective districts who may be interested in the development of a new agreement, assisting them in working out its details in a comprehensive proposal which can be submitted to Washington.

[12] The whole procedure starts from an agreement to which local interests are ready to adhere, the license being resorted to merely to assure signatories that any dissenting minority will conform. After the plan is put in operation, the local people who *agreed* must assume the responsibility for positive action to carry out the agreement rather than leaving such decisions to the Adjustment Administration while they reserve the privilege of objecting to whatever is done. Administratively the government contributes information and advice and reserves a veto power. But the marketing plans must be operated by the groups which called them into being (except under the fluid milk licenses, whose administrative situation will be discussed presently).

Under such a plan the locally selected boards and committees would serve simply in an advisory capacity, supplying such information and making such recommendations to the local representative of the AAA as he might desire or they think fit. No such administrative theory was, however, put into effect with reference to special crops prior to the time that the decision of the Supreme Court in the Schechter case (NRA) cast doubt upon the legality of such a delegation of authority to non-official agencies as had been taking place under the established procedure with reference to control committees. As a result of this decision, certain changes were introduced in the amendments then pending before Congress. Before discussing these amendments, however, we shall describe the system of administrators under which fluid milk licenses had for more than a year been handled.

When the first 15 marketing agreements were put into effect, great reliance was placed upon the existing co-operative and distributor organizations as the machinery through which the terms of the agreements would be carried out. The Boston agreement, however, provided that the contracting producers and contracting distributors should name a person to act as market director to carry out the terms of the agreement, his actions being subject to appeal to a board of arbitration (see page 214).

From the start there had been a good deal of talk of "milk trade boards" in each market, which should collect a service charge on all milk and from this defray the costs of the various services provided under the terms of the agreement. The co-operatives had long been accustomed to making a "check-off" on their members and to performing such services as checking of weights and tests, as well as to carrying on collective bargaining and other negotiations with the distributors. They were unwilling to see any of these functions pass out of their hands, whereas non–co-operatives were unwilling to come under this check-off system. As a result, deductions from non–co-operative milk were ordinarily paid to the local Dairy Council, which was to see that service comparable to that of the co-operative associations was given to the independents. Several of the agreements gave the signatories authority to set up such a supervisory body as they thought necessary, but these provisions had not been made use of, and the whole matter was still in a very inchoate stage when the milk marketing agreements were cancelled (February 1, 1934) and the fluid milk program passed into its license phase.

This transition involved one clear-cut change, namely; the appointment in every licensed market of a market administrator, who was the direct representative of the AAA. This step was taken in response to the view of the

Legal Counsel that federal licenses must be directly administered by federal authority and foreshadowed the position subsequently set forth by the courts (see pages 283, 285, 288). At the same time the new licenses made formal provisions for the setting up of a local supervisory committee, and statements of policy emphasized an intention of increasing the amount of local participation. The idea of local milk industry boards federated into regional boards and a single national overhead agency to co-ordinate the whole fluid milk industry was espoused by the AAA, but with the important qualifying remark: "In delegating power and authority to industry boards or committees, it must at all times be understood that these boards are under the supervision of the Secretary of Agriculture, as he must control their actions, especially when such actions interfere with other sales areas."

In fact, these local committees and the whole milk board system proved not to be viable. Perhaps because of the limitations placed upon the authority of these boards and perhaps because of the vitality already acquired by informal councils of co-operative officials and distributors' representatives, the system of market administrators, instead of putting the Secretary in more direct and effective control of the market, seems to have thrust these previously dominant coalitions of collective bargaining agencies back into real control of the situation.

The implications of the United States Supreme Court's decision in the Schechter case in May 1935 seemed to be that in future the market administrator type of organization will have to be used exclusively. If so, past experience under the milk licenses raises some doubts as to whether it will be possible under such a system to secure the voluntary agreement on terms of a marketing plan and the co-operation in carrying it out which seem to be necessary to the success of any such venture. Certainly it is true that, in spite of the efforts to secure new marketing agreements after the initiation of the policy of licenses under market administrators beginning in February 1934, it was nowhere possible to secure such an agreement. Under the amendments of August 24, 1935 to the Agricultural Adjustment Act, licenses will be superseded by Secretary's orders and administrative arrangements resembling the procedures used in the fluid milk markets much more closely than those used under agreements and licenses for special crops. We shall discuss the administrative implications of these amendments at the close of this chapter but will first complete our examination of the administrative arrangements which have obtained where local control committees rather than market administrators were employed.

MAKE-UP OF LOCAL SUPERVISORY BODIES

If the ideal of economic democracy with a large measure of local autonomy is to be made workable, it is evident that some logical formula must be devised or some happy hunch hit upon which will result in giving proper recognition and weight to the several interest groups involved in any given undertaking. These alignments involve issues among distributors, processors, and producers; between co-operatives and non–co-operatives, both on the producer and on the distributor side; between large processors and distributors (including co-operatives) and small ones; and between geographical districts within the area covered by an agreement or license.

The Adjustment Administration's initial statement of general policy (see page 238) covering this matter is extremely interesting. It states that: "All the elements of the industry, irrespective of their membership in trade associations, shall be adequately represented." The use of the word "industry" followed by the reference to trade associations seems to indicate clearly that the point of view is that of mercantile and manufacturing industries rather than that of agriculture as such. There was manifest at this time a considerable tendency to look upon marketing agreements in much the same light as industrial codes under the NRA except that the farmer was to be a sharer in any benefits accruing.[13] This view is borne out by the sentence immediately following the one just quoted, which states that: "The representation shall extend to producers if any group thereof is a party to the agreement." Under the act as it then stood, such participation in the agreement on the part of producers could be only through their membership in co-operative associations.[14] The statement of policy adds:

> Where producers have a direct interest, but where no group of producers is a party to the agreement, provision should be made wherever practicable for an advisory committee representative of

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[13] The most extreme expression of this view came in the early days of marketing agreement activity, when certain processor groups apparently looked to this device as a means of securing for themselves advantages which they had been unable to get under the anti-trust laws and Federal Trade Commission surveillance. Proposed agreements for packers, linseed oil crushers, cotton ginners, cottonseed oil mills, and sugar refiners fell in this group. The packers' agreement was fairly typical in its proposal that the control committee be designated by the Institute of American Meat Packers. This and similar proposed agreements failed to win the approval of the AAA because it could not be discovered that they were calculated to effectuate the purpose of the act—betterment of farmers' prices and incomes. In a few cases, however, codes were completed and put in effect. See table on p. 58.

[14] That is, so far as the control committee was concerned. It was, however, from the start very common to accord producers (sometimes specifically those who were not members of co-operatives) membership on important operative committees such as acreage committees, crop boards, proration committees, and the like.

producers' interests; and in all cases where no group of producers is a party to the agreement, their interests, even if remote, shall be protected by the powers vested in the Secretary of Agriculture.

This put the producer in practically the same relation to marketing agreement administration as was the consumer with a Consumers' Counsel to represent his interests. In the marketing agreements which became effective between August and November 1933, control committees[15] were in the main simply committees of processors.[16] The California cling peach agreement, besides eight processors (one a co-operative), called for a representative of the "consuming public" and the vice-president of the California Farm Bureau Federation. The control board under the walnut marketing agreement included five representatives of co-operative packers, two representatives of private packers, one representative of non–co-operative growers, and one selected by the other eight. Under several of these agreements, there were also crop estimating committees, proration committees, crop boards, acreage committees, and similar bodies dealing with the technical process of proration, and on these there was also grower representation, though generally limited to a minority. A producers' committee under the evaporated milk agreement might "jointly confer with the manufacturers' committee with respect to any changes" in the schedule of minimum prices provided under the agreement.

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[15] Though designated during this early period by several titles other than control committee, such as executive committee, manufacturers' committee, control board, distribution committee, and marketing board. The North Pacific wheat agreement likewise gave producer associations equal representation with millers and distributors.

[16] Though the California rice marketing agreement makes something of an exception. Besides the millers (largest of which was the co-operative growers' mill) the signatories included an "independent rice growers' committee, an unincorporated association."

Beginning with the citrus marketing agreements (effective December 14 and 22, 1933) there was evident a movement toward larger grower representation on control committees which took the general pattern of equal representation for growers.[17] The 50-50 rule prevailed during 1934. The marketing agreement for shippers of fresh peas and cauliflower grown in the state of Colorado (effective January 11, 1935) provides a control committee consisting of three representatives of shippers and six representatives of producers. This agreement provides that "each shipper or producer shall be entitled to cast one vote on behalf of himself, agents, partners, affiliates, subsidiaries, and representatives" in the election of members of the control committee. All three shipper members are elected by vote of all shippers, whereas the producer members are selected by a general election in each of four districts, two of which have one representative each, and two of which have two representatives each.

Under such a plan districts are delimited and representation given to each so as to equalize representation with volume of business.[18] The same desire to weight representation equitably is also manifest with reference to shipper or processor representatives in the majority of the agreements. For example, the new fresh asparagus marketing agreement (effective April 3, 1935) specifies that one member of the control committee shall be designated by each handler who shipped 100 or more carloads of asparagus during the preceding year, and four members

[17] In the case of odd-numbered boards, it was sometimes stipulated that the odd member should be neither a grower nor a processor or handler, but more often the processors or handlers were given the extra representation.

[18] Frequently difficulty arises in this connection and it has to be worked out among the interested parties as part of the negotiations prior to the adoption of the agreement. In numerous cases the original districting has been unsatisfactory and has been the subject of later amendments.

shall be selected by a general election in which all handlers who individually shipped less than 100 carloads shall each be entitled to one vote.

In a majority of cases, the control committees have shown a considerable feeling of solidarity and have settled down rather promptly into effective working organizations. In a few cases, however, such as Northwest deciduous tree fruits and Florida citrus, past trade friction has been carried over into the work of the committee and it has been impossible to get beyond this factional strife to the development of policies designed to advance the industry as a whole. In some instances, geographical rivalries have entered into the picture and have been aggravated by the gratuitous activities of local newspapers or chambers of commerce which were desirous of having the headquarters of the control committee located in their city. On the other hand, agreements have in several instances been the means of mitigating, if not ending, ancient feuds in the interest of a more unified group effort.

PRODUCERS' DIRECT PARTICIPATION IN AGREEMENTS

Besides the enlarged participation of producers in the selection of control committees referred to above, growers have also secured (under the amendment of April 9, 1934) the right to become direct parties to an agreement. No attempt has thus far been made to bring individual growers in as signatories to agreements on a wide scale except under the second Florida citrus marketing agreement (effective December 18, 1934). Following the signatures of the grower members of the control committee and their alternates, this agreement states that 1,865 counterparts of the agreement executed by growers are on file in the office of the Secretary of Agriculture. Whether such a procedure is to be followed on a broad scale in the future remains to be seen.

Several probable effects of such a development are apparent. (1) It would serve to increase the participation of growers in the formulation of agreements, inform them generally as to its terms, and presumably conduce to a larger measure of co-operation on their part in the carrying out of the agreement. (2) It would apprise processors and handlers of a belief on the part of producers that the agreement was designed to promote the prosperity of the industry, and of the producers' intention to see that their product was handled in accordance with its terms. (3) It might, if carried to its logical conclusion, transform marketing agreements from their original character of industry codes of processors and distributors or their present hybrid half industrial and half agricultural character into a new type of organization, with the producers' group as a whole assuming complete control of their product and both distributors and processors occupying a service relationship with reference to the commodity.

The general attitude in the early days of marketing agreements was that there was to be a general recovery movement based on an upward revision of prices all along the line. It was felt that in situations which were to be attacked from the market adjustment rather than from the production adjustment approach, price enhancement could be most speedily and effectively secured if processors and distributors participated—indeed, led in the effort. To secure their interest and co-operation, it was agreed that they would need to share directly in the financial benefits of the undertaking and, to make their participation most effective, it was thought necessary to give them a large part in administrative control.

In so far as marketing agreements and licenses have been, or are in future to be, regarded as institutions of marketing reform, particularly curtailment of processing and distributing margins (see Chapter XIII), it would seem logical to expect that the representation of processors and distributors as such on control committees would dwindle and disappear except to the extent that growers either as individuals or through their corporate or co-operative organizations operate also as distributors and processors. The question of the future of marketing agreements and licenses ties in very closely with the issue as to what relation they bear to the co-operative organization of farmers. This issue was left in an ambiguous position in the law but it has become a clear-cut and at times acute administrative problem.

RELATIONS BETWEEN THE AAA AND CO-OPERATIVES

"Associations of producers" were permitted to become parties to marketing agreements under the Adjustment Act, and they have in fact become signatories to every marketing agreement which has been brought to the effective stage except for a few special types such as the temporary price-raising agreements with tobacco manufacturers, and the alcoholic beverage, and the gum rosin and gum turpentine agreements.

The first attitude assumed by the Adjustment Administration was that it would "give recognition to co-operatives in connection with marketing agreements in so far as they are situated and equipped to render aid in carrying out the purposes of the act." Officials at this time were very deeply concerned to see that all parties should receive equal and impartial treatment, and they believed that the above-stated policy would assure this result.

The co-operatives, however, felt that the letter of this policy offended the spirit of fair and equal treatment to the co-operatives. They pointed out that through a long period of struggle and sacrifice they had built up agencies to render various marketing services, primarily to their own members but in the nature of the case beneficial sometimes in less, sometimes in equal, and sometimes even in greater degree to those who had not borne the burden of building up these service agencies. They felt that the Adjustment Administration, by nominally protecting everyone's right to equal treatment, was giving those who had been indifferent or even hostile to previous efforts to improve the producers' position in the market what amounted to more favored treatment than the co-operatives.

Particular situations that arose in this connection were met in various ways, such as the making of a service "check-off" on non–co-operative dairymen equal to that made by the co-operatives and the giving of analogous services through the market administration.[19] On the other hand, AAA officials continued on their guard against efforts of co-operative organizations to make themselves the exclusive agents for carrying out market adjustment efforts in the same manner that trade associations of processors and distributors had sought to do in connection with certain other commodities.

In order to clarify the situation once and for all, the American Co-operative Council at its annual meeting in January 1935 drew up a detailed statement of its position and of the administrative attitude which it thought was incumbent upon AAA authorities. This memorandum was presented in person to the officials concerned and discussed with great thoroughness and entire good nature. Agreement was reached as to courses of action which would effect equality of treatment in fact as well as in spirit. To cover the matter more fully a provision was inserted in the amendments shortly thereafter presented to Congress which read:

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[19] See p. 215 and John D. Black, *The Dairy Industry and the AAA,* pp. 98, 113. For further discussion of the relation between the AAA and the co-operative movement, see *American Co-operation,* 1933, pp. 29-85; the same, 1934, pp. 46-76, 85, 94ff.

> The Secretary of Agriculture . . . in the administration of this title shall accord such recognition and encouragement to producer-owned and producer-controlled co-operative associations as will be in harmony with the policy toward co-operative associations set forth in existing acts of Congress, and as will tend to promote efficient methods of marketing and distribution.

In submitting the amendments to Congress, Administrator Davis said:

> The Agricultural Adjustment Administration intends, and believes it to be the intent of Congress, that the functioning of the act shall whenever possible accord recognition and encouragement to producer-owned and producer-controlled co-operative marketing associations. After consultation with leaders of co-operative marketing associations, it has been suggested that language be added to Section 10, Sub-section (b), to express this policy.

The proposed section was included in the amendatory act as finally passed, and there was also another provision touching co-operatives. In the operation of the act, there had been some uncertainty as to whether the vote of a co-operative association on matters connected with a marketing agreement could be regarded as the vote of its members. The question became much more important under the amendments of August 1935, since a Secretary's order in lieu of a license issues only upon the express approval of two-thirds of the producers. To clarify this matter, Section 8 (12) was added to the act (see Appendix C, page 432) by the amendments of August 24, 1935 providing that in any determination of the producers' attitude with reference to the issuance, modification or termination of any order, the vote of the co-operative association should be regarded as the "approval or disapproval of the producers who are members of, stockholders in, or under contract with such co-operative association of producers."

It is perhaps too much to expect that these definitions of policy completely dispose of all difficult administrative situations. They do, however, mark a further step toward not merely clarifying but also strengthening the position of co-operative associations of producers. They are probably to be interpreted as part of a swing of marketing adjustment plans from distributor direction to producer direction.

SECURING CURRENT DATA ON OPERATIONS

The last major administrative problem to which we shall refer covers the highly controversial issue as to the degree of access to the account books and business records of signatories and licensees which it was proper for the Secretary of Agriculture to demand and expedient for processors and distributors to grant.[20] The essence of the marketing agreement provision is that it grants certain agencies rights to joint action which would otherwise be denied them under the anti-trust laws. The act was passed to benefit producers but also puts a mandate on the Secretary of Agriculture to prevent the exploitation of consumers. To discharge these responsibilities and make sure that the monopolistic powers granted under Section 8 (2) of the act were not used improperly, he must be quite fully informed as to what goes on under the agreements.

Naturally all marketing agreements provide, as we have noted in preceding pages, that signatories shall submit regular reports to the Adjustment Administration of such character and upon such forms as the Secretary of Agriculture may prescribe. These are to be made under oath, but administrative officials have desired to strengthen their position still further by asserting the right to examine all such books and records as they deem pertinent whenever in their judgment this is necessary in order to be certain that the powers granted are not being misused. In a few agreements this right has been quite freely granted whereas in others it has had to be considerably circumscribed before being accepted by the signers of the agreement. In either event the question arose again in full force when it came to the accompanying licenses. Here the AAA included such provision as it felt was required for the proper discharge of its duties, extending it to those who did not accept the voluntary terms of the agreement and enlarging it if those terms were considered inadequate.

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[20] The legal aspect of this question will be discussed in the following chapter.

Licensees have resisted such claims of right to examine books and records as have been inserted in licenses, as we shall see in the following chapter. In order to clear the question of legal authority for such action, it was proposed in amendments before the last Congress to add to the Adjustment Act a new sub-section reading as follows:

> Sec. 8 (4) (a). All parties to any marketing agreements, and all licensees subject to a license (whether such parties and licensees be corporations or others), shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or license has been carried out and/or has effectuated the declared policy of the act, and, with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from

the anti-trust laws, such information to be furnished in accordance with forms of reports to be supplied by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this Sub-section (4) (a), or for the purpose of obtaining the information required in any such report where it has been requested and has not been furnished, the Secretary is hereby authorized to examine any books, papers, records, accounts, correspondence, contracts, documents, or memoranda, within the control (1) of any such party to such marketing agreement, or any such licensee, from whom such report was requested and/or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such licensee and/or (3) of any subsidiary of any such party, licensee or person.

Notwithstanding the provisions of Section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this sub-section shall be kept confidential by all officers and employees of the Department of Agriculture and shall be disclosed only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he is a party, and involving the marketing agreements or license with reference to which the information so to be disclosed was furnished or acquired; Provided, however, that nothing in this sub-section shall be deemed to prohibit (1) the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of licensees, which statements do not identify the information furnished by any individual, or (2) the publication by direction of the Secretary of the names of any persons violating any marketing agreement or any license, together with a statement of the particular provisions of the marketing agreement or license violated by such persons. Any such officer or employee violating the provisions of this sub-section shall upon conviction be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

Of this section, Administrator Davis in his letter of transmittal said:

For the protection of the public, of producers, and of the business interests concerned, the Adjustment Administration must be able

> to obtain information to disclose whether the policy of Congress is being effectuated by such marketing plans. Licensees as well as parties to marketing agreements should be required, upon request of the Secretary, to make reports on the operation of the agreement, and give access to their books and records to verify such reports, or to secure the information if reports are not made when called for.

This section was passed with certain minor modifications, chiefly designed to bring it in accord with the change from licenses to orders (see full text of marketing agreement and orders sections of the amended act, Appendix C, page 435).

As a matter of practical administration, however, it is at least arguable that a less inclusive authority than that embraced in the amendment would be adequate and perhaps more workable. It was only in the milk licenses and a limited number of cases covering special crops where resale prices were prescribed under a license that the auditing of business records became important as a means of checking compliance. Price fixing is excluded under the recent amendments and hence that justification disappears. Even in the most extreme cases, it would seem that any significant evasion of the terms of an order could be detected and reached through ordinary court procedures. It is sometimes claimed that many lines of business are so complex and the various phases so interrelated that it is hardly possible to devise any system of reports which will reveal the situation truly and fully, and that it becomes necessary therefore to go through the given company's books with government auditors to get at the facts adequately. To this it may be answered that accounting is not a science with a technique of investigation which yields a demonstrably true answer. So many issues of theory and personal judgment enter in that the precise meaning of the final figures must still remain a matter of debate.

It thus becomes a question whether the struggle to get an inclusive right of access to books and records included is worth the opposition which it inevitably engenders. Might not more net gain for agriculture be secured by cultivating methods of co-operation and carrying the *agreement* approach as far as possible? And in testing the results under agreements and licenses, are there not non-accounting tests which can be applied more economically and with as high a degree of reliability as those derived from the work of a staff of accountants turned loose in a business with whose technical details they are of necessity unfamiliar?

ADMINISTRATION UNDER THE AMENDMENTS OF 1935

We shall not attempt at this point to discuss in detail the nature of the amendments to the Adjustment Act which were passed in August 1935. This subject is related more closely to the legal issues discussed in the following chapter. It seems desirable, however, before leaving our discussion of administrative procedures and problems, to note briefly the changes which will be introduced under the amendments.

The earlier part of this chapter has called attention to the fact that the administrative officers of the act have entertained a highly democratic philosophy of administration and have sought to leave the actual development of market adjustment proposals within the control of local marketing agencies and have sought to put the largest measure of administrative responsibility upon these parties. So far have they gone in this direction in fact that various lower courts have held that their procedures have amounted to an undue delegation of authority to persons not in official positions. This view was by implication strengthened by the ruling of the Supreme Court in the Schechter (NRA) case. The amended act, besides being much more explicit as to what elements may be included in a market adjustment undertaking, provides procedures under which any action takes the form of an act of the Secretary of Agriculture.

Administratively, therefore, three things are apparently in order. First, control committees must be named by the Secretary rather than elected by the industry, so that such delegation of power as is made by the Secretary in accordance with the provisions of the act will be only to his own appointees. Attention has already been called to the strong desire on the part of the Adjustment Administration to employ democratic elective procedures in the selection of control committees, the success of the Administration having been in large part dependent upon this local participation. It seems clear that the Adjustment Administration has no desire to substitute an appointive procedure and equally clear that if anything like a dictatorial attitude were taken, the whole system of agreements would promptly break down. On the other hand, it would seem entirely possible in the future for local interests to draw up panels of names which they wish to recommend to the Secretary for the setting up of a control committee with indication of their relative preference. In making selections, the Secretary could, although following the letter of the appointive procedure, maintain the spirit of democratic selection. Present indications are that such a policy will be followed.

To accomplish this change, all the marketing agreements which are to be continued in effect must be re-drafted to provide a different machinery for the setting up of local supervisory agencies. In this process attention will also be given to a second matter, namely, a procedure by which specific action in pursuance of a market adjustment plan shall be in legal form the personal act of the Secretary. Officials of the Adjustment Administration have not yet decided whether, in order to comply with the amended law, it will be necessary that all prorates or other specific actions likely to involve subsequent enforcement proceedings will have to be issued as specific orders of the Secretary or whether as in the past such orders may be issued by control committees, with the formal approval of the Secretary.[21] Clearly the former practice of having them issue regulations which would stand unless or until disapproved by the Secretary will not in future be permissible.

The third administrative change grows out of the striking out of the licensing section from the new law. Instead of putting all handlers of a commodity under license to observe the terms of a marketing agreement under the direction of the local control committee, there must in future be a general Secretary's order directing these handlers to comply with the terms of the marketing plan set forth in the marketing agreement. This may be an agreement drawn prior to or contemporaneously with the formulation of the Secretary's order or one which would be prepared subsequently if the Secretary issued his order under the "reserve power."[22] Besides this initial general order embodying the comprehensive statement of the marketing plan, there will probably be subsequent orders covering specific actions dealing with prorates, shipping holidays, grade limitations, and the like, although it may be that with reference to some of these actions legal requirements will be met if the control committee appointed by the Secretary issues such orders and each one receives the specific approval of the Secretary. Where figures setting a season prorate, packing quota, or percentage of reserve tonnage are included in the general order, the alteration of such figures the following year or during the marketing season will have to be preceded by a public hearing.

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[21] There is additional reason for having quotas and allotments made by the Secretary. This grows out of a provision included in the 1934 (Sugar Act) amendments which provided triple damages in the case of violations in the following section: "Sec. 8 (A) (5). Any person willfully exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture, and any other person knowingly participating, shall forfeit to the United States a sum equal to three times the current market value of such excess, which forfeiture shall be recoverable in a civil suit brought in the name of the United States." For the government to be in a strong legal position in any recovery suit, it must be clear that the allotment was made by the Secretary's direct action and not by some other agency acting under a more or less general and remote delegation of authority.

It would appear that a Secretary of bureaucratic leanings might, in following the letter of this new law, make the administration of market adjustment plans a strict and even arbitrary regimentation of the activities of local groups. On the other hand, there would seem to be no reason why the legal requirements under our constitutional form of government could not be fully observed and at the same time adjustment officials continue the spirit of local autonomy and democratic participation in the formulation of plans which has animated the administration of the act heretofore. What will be necessary is to develop still further the plans of decentralization sketched in the earlier parts of this chapter, make the field representative a still more effective liasion officer between Washington and the local group, and speed up the machinery through which plans tentatively formulated in the field can be promptly routed through the several officials who need to consider them prior to official signature by the Secretary.[23] Plans are already well advanced for working out such arrangements, and the redrawing of agreements to bring them into conformity with the amended act is in progress.

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[22] The act provides that an agreement will come into effect whenever 50 per cent or more of the handlers of the commodity desire such an agreement. However, if such action cannot be secured on the part of one-half of the handlers, whereas two-thirds of the producers of the commodity desire a marketing plan, the Secretary may upon their request and with the approval of the President issue an order setting forth such marketing plan as he may formulate with the advice of producers and such handlers as are willing to participate.

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[23] Besides making it somewhat more difficult to continue the spirit of local autonomy in democratic participation, it is evident that the new procedure will entail a larger amount of routine work on Adjustment Administration officials and the office of the Secretary of Agriculture.

CHAPTER XII

ENFORCEMENT AND LEGALITY

In spite of the Adjustment Administration's policy of putting into marketing agreements only such provisions as had met the approval of a substantial majority of handlers and producers—indeed, largely been worked out by them—adequate execution of the terms of the various marketing plans has presented somewhat serious problems. This has in some instances been due to dissatisfaction which persons who had at first been favorably disposed toward these programs later came to feel as to the results actually attained under them.[1] But in much larger degree it has been the result of disaffection on the part of licensees who were not participants in the formulation of a given agreement [2] and who, when brought under its jurisdiction by license, sought some avenue of escape.

We noted in the preceding chapter the efforts made to draw such persons into harmonious working arrangements by giving them representation on the control committees and by having both the local supervisory agencies and the field representatives of the AAA follow methods of face-to-face explanation and friendly persuasion. Beyond efforts to secure voluntary compliance, however, it has been necessary to make provision for enforcing the market adjustment plans upon those who persisted in open or covert violation. To this end a separate Licensing and Enforcement Section was established under the initial organization plan of the AAA. Under the reorganization effected in January 1934 this became a Field Investigation Section. Besides this, there are an Administrative Enforcement Section and a Litigation Section in the office of the Solicitor of the Department.[3]

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[1] Perhaps the most important cause of such dissatisfaction was to be found among persons who had supported a given agreement on the assumption that its terms would be voluntarily observed by or enforced upon all their competitors. When later they found this not to be the case and themselves subject to unfair competition from violators, they were naturally irritated and tempted to join the ranks of the violators.

[2] Sometimes also even persons who did participate in the drawing up of agreements declined to sign and were subsequently brought under the market plan by the license.

ENFORCEMENT AGENCIES AND MEASURES

It is the duty of the Field Investigation Section to keep informed as to infractions of agreements, licenses (or orders), and administrative rulings promulgated from Washington. Complaints from market administrators and control committees and information from field representatives of the Dairy and General Crops Sections come to this section and it proceeds to investigate alleged infractions and if possible to bring them to an end. For this purpose, the section keeps a number of its men (now approximately 25) in the field to make personal contacts with alleged violators; to investigate the precise character and extent of violations, together with the reasons and extenuating circumstances, if any; and to secure a friendly adjustment if possible. For the great mass of minor infractions, and many which are more serious, they have succeeded in effecting satisfactory adjustment. When this proves impossible, the field men so advise the section in Washington and submit such evidence as they have collected in the course of their investigations.[4]

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[3] Prior to the administrative reorganization of February 1935, the two latter sections were units of the Legal Division of the AAA.

[4] It is the intention in this account of field investigation and enforcement to give an outline of the working arrangements set up rather than an idealized

On the basis of information forwarded by its investigators in the field, the Washington staff of the section reviews the whole case and arrives at a decision as to the course it will recommend as a means of securing compliance. In so doing, this section confers with the commodity section involved (either Dairy or General Crops) and any recommendation for the initiation of enforcement proceedings must have the approval of the commodity section as well as the Field Investigation Section.

As to enforcement procedures, two courses are open: (1) administrative enforcement by invoking the penalties provided in the act; and (2) judicial enforcement by resort to the courts of equity to obtain an injunction.[5] For the former, it was provided in the act of May 12, 1933 that for violation of the terms or conditions of a license the Secretary of Agriculture might, after due notice and opportunity for hearing, revoke or suspend the license, and the licensee would be subject to a fine of not more than $1,000 per day if he continued in business without a license.[6]

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picture of the way in which these arrangements work. In practice, considerable difficulty was at first encountered in securing men of suitable training, experience, and temperament to insure a prompt detection of violations and vigorous but discriminating accumulation of the evidence, affidavits, documents, or other materials necessary to establish a case. With the passage of time, the training of the men has been greatly improved and a staff developed which is adequate for detecting violations and securing evidence against violators. Obviously, a vigorous enforcement program and any strengthening of the statute tend to simplify the task of field investigation, whereas legislative uncertainty or lax enforcement policy tends to multiply infractions of license provisions and magnify the task of field investigation.

[5] There have also been several suits for collection of assessments.

The original act contained no specific provision giving federal district courts jurisdiction to enforce the act. Hence the Secretary was not in a position to go to these courts seeking an injunction against violators. This defect was remedied by a provision included in the (Sugar Act) amendments of 1934. *Agricultural Adjustment Act as Amended,* Sec. 8 a (2)(E)(6).

[6] The Court, however, would impose a fine under this provision only as the result of a suit in which the government had convinced the Court that the

When the Field Investigation Section, with the concurrence of the commodity section and the Legal Division, recommended that revocation proceedings be begun[7] against a violator, an order usually issued in the name of the Secretary through the Administrative Enforcement Section, calling upon the violator to show cause why his license should not be either suspended or revoked. Such "show cause" order was returnable within a "reasonable time" (ordinarily 10 to 15 days), and the mere issuance of the order frequently served to bring the violator into line. If he failed to make reply in satisfactory terms, a hearing on the specific charges set forth in the order to show cause was called under the direction of the Administrative Enforcement Section of the Solicitor's office.[8]

Here, again, the notice of hearing might impress the violator sufficiently so that he would cease his violations and make such financial settlements as were necessary to remedy past violations. If not, the hearing would proceed before a presiding officer designated by the Secretary much after the manner of a court action, with legal counsel on both sides. The record of this hearing was given consideration by the presiding officer and by the administrative officials of the Adjustment Administration, and this sometimes resulted in the exoneration of the alleged offender. In other cases, the offender might admit previous violations but agree to comply in future and to make restitution for past offenses. In some cases, the peculiar difficulties of a certain type of licensee in adapting his business to

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act was constitutional, the license properly drawn in conformity to the act, and the licensee had in fact violated such license.

[7] Sometimes the Legal Division is requested to send the violator a strong letter demanding compliance and threatening proceedings. Where this is done, compliance is often secured without resort to further measures.

[8] The procedure is laid down in General Regulations, AAA, Ser. 3, issued September 1933.

the precise requirements of a license have resulted in the modification of some of the terms of the license through amendment or in the issuance of new interpretative instructions to supervising agencies. The policy has been to use every means possible to secure compliance, but if no means of settlement can be worked out, the Solicitor and the Administrator recommend to the Secretary that he suspend or revoke the violator's license.

The first license (Chicago milk) became effective on August 1, 1933 and the first "show cause" order was issued under that same license on August 29.[9] From that time up to June 1, 1935, control committees, milk market administrators, and others made formal complaints to the number of 653. Of this total, 480 related to fluid milk[10] and 173 to other products. Of these 653 complaints, 330 have been adjusted without resort to revocation proceedings, and "show cause" orders were issued in the remaining 323 cases.[11]

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[9] For further discussion of the enforcement situation under fluid milk licenses, see John D. Black, *The Dairy Industry and the AAA,* pp. 102 ff., 134 ff.

[10] These complaints arose in 27 of the 50 licensed milk areas but the great majority of them were confined to five markets—Chicago, Boston, Los Angeles, Philadelphia, and St. Louis. There were 243 from Chicago alone. The 173 complaints under licenses other than milk arose (though many of them were merely bookkeeping irregularities) under only 13 of the 32 licenses in this group (counting cling peaches, Florida citrus, and California asparagus each as one). The largest single number (37) arose under the California cling peach license, followed by 34 in Texas citrus, 31 in Florida citrus, 26 in Southern rice, 19 in Northwest deciduous tree fruits, 13 in California citrus, 5 in California prunes, 3 in California raisins, and 1 each under dates, gum rosin and turpentine, walnuts, Tokay grapes, and ripe olives.

[11] Frequently, only a single type of violation was alleged, but often there were several. All told, there were 608 allegations under the 323 "show cause" orders. The most numerous alleged violation was failure to abide by resale price provisions (162) and minimum producer prices (52). Next in importance came failure to pay assessments to the control committee or market administrator. This violation was alleged in 136 cases and covered both failure to pay assessments for support of the work of the control committee or market administrator's office and failure to pay into the equalization fund set up under several

Of these 323 cases, 59 were adjusted after issuance of the order but before hearing. In 264 cases, formal hearings have been held, with the following outcome:

Fluid Milk	
Formal order of revocation, suspension, or finding of serious violation	27
Abandoned (license terminated)	108
Held in abeyance (adverse court decisions or pending litigation)	12
Held in abeyance (compliance secured)	42
Dismissed as unfounded	2
Awaiting decision of Secretary	2
Proceedings continued	1

General Crops[12]	
Formal order of revocation, suspension, or finding of serious violation	26
Same as above but followed by reinstatement based on assurances of future compliance	4
Dismissed as unfounded	1
Dismissed (compliance secured)	4
Held in abeyance (compliance secured)	2
Awaiting decision of Secretary	32
Referred to Department of Justice	1

We turn now to the second enforcement procedure, namely judicial enforcement. It is not strictly an alternative to administrative enforcement but supplements it in the hope of obtaining more prompt results. The method of field investigation, hearing, findings, recommendation,

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of the milk licenses (see p. 202). There were 135 allegations with reference to accounts, reports, and records, of which 17 were for failure to keep proper books and accounts, 93 for failure to file reports, and 25 for refusal of access to books and records. In 37 cases there was alleged failure to observe requirements of the license as to inspection certificates, containers, and labels, or classification of the product. In 3 instances under the prune agreement there was alleged failure to abide by the license agreement as to reserve tonnage, and under various licenses there was a total of 51 allegations of failure to observe producers' quotas. Under milk licenses there were 20 allegations of failure to limit purchases to producers having a "base" (see p. 203). Finally, there were 9 alleged failures of handlers to furnish, when requested by the Secretary, bonds to secure payment to producers for milk delivered.

[12] Rice included.

and suspension or cancellation of licenses is time consuming. Often the situation is such, particularly with perishable crops having a short shipping or processing season, that delay would rob revocation proceedings of any remedial value. The objective of a marketing plan might be wholly lost within a few weeks or even days, whereas the careful procedure of a revocation action ordinarily takes from six weeks to as many months. Hence, in order to check violations promptly when speed seemed essential,[13] the Adjustment Administration in numerous instances turned to courts of equity and sought to enjoin licensees from the continuation of practices in violation of the terms of their licenses.[14] When such action was taken, the violator naturally sought to defend his position by attacking the legality of the statute or the licenses issued under it. In other instances, licensees have taken the offensive in this judicial battle without waiting to be cited for violations of the license or, in cases where injunction proceedings had already been started by the Secretary, have filed a cross bill seeking to enjoin him from enforcement of the license.

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[13] Besides the matter of speed, there has also been the feeling in administrative circles that the revocation of a license constitutes too drastic a penalty for any except the most flagrant and intentional violations. In the amendments introduced in the spring of 1935, it was provided that the violator, instead of having his license revoked, should be subject to a fine of "not less than $50 or more than $500 for each such violation, each day during which the violation continues being deemed a separate violation." The amendments as finally passed carried this same penalty, with reference to "orders."

[14] This procedure was first employed in connection with the license for canners of California cling peaches. Within a few days after the issuance of this license (Aug. 17, 1933), it was noted that certain of the licensees were violating their agreements by failing to limit their pack to the quotas assigned them. The government promptly served notice that it would suspend the license of any canner who failed to comply. On September 8, Secretary Wallace issued an order to one canning company which had been a flagrant violator to show cause why the license should not be revoked. The company was given until September 21 to show cause. It immediately advertised for extra help and began operating three shifts a day with a view to canning as many peaches as possible before a restraining order could be issued against it. In this situation, the representative of the Department sought authorization from Washington to secure an injunction against this canner. The Attorney General's office was unwilling to take action on this request until it had carefully investigated the situation, lest by acting hastily it might open the way to an adverse ruling which would prejudice the whole enforcement situation. Finally, however, one of its staff was dispatched to California and a temporary injunction secured on September 19. In the Federal District Court at San Francisco on October 2 this injunction was made permanent. *AAA Press Releases Nos. 571-34* and *784-34.*

All told there have been (up to June 1, 1935) 24 litigations[15] under the marketing agreement and license provisions of the Agricultural Adjustment Act, 12 brought by the government and 12 by handlers seeking to prevent enforcement of licenses. These actions, both offensive and defensive, raised numerous issues with reference to the legality of the licensing procedure and the constitutionality of the act. Adjudicated in numerous lower courts, they resulted in several favorable decisions but also in a number which were adverse. In 17 of the 24 cases decided in the lower courts, the decision did not turn on the issue of constitutionality, but in 7 cases, constitutional questions were passed upon.

The statute has not yet come before the Supreme Court of the United States, but that court's recent decision in the Schechter case involving somewhat analogous issues under the National Industrial Recovery Act was influential in modifying the form of certain amendments to the Adjustment Act which were already pending in Congress.

[15] Seventeen of these cases related to fluid milk in 10 markets and 7 to licenses covering other commodities (citrus, cling peaches, Southern rice, and Northwest deciduous fruit). Fourteen fluid milk cases (7 of them under the Boston license) and 13 others (6 under the Texas citrus license) were pending on May 31.

Although the several tabulations of enforcement actions in this chapter are brought only to June 1, this practically completes the story. After the Schechter decision (May 27), most courts manifested such misgivings as to the constitutionality of the act that enforcement proceedings were brought to a virtual standstill pending the action of Congress in amending the statute.

We shall therefore examine the major issues dealt with in such judicial decisions as have been rendered in license enforcement cases and the changes in the statute which have been effected by the amendments passed on August 24, 1935.

DUE PROCESS AND INTERSTATE COMMERCE

First, we find the familiar argument that the devices and practices undertaken under the act result in the taking of private property without due process of law. This issue arose in the first case [16] to be adjudicated and was decided in favor of the act on broad grounds of national welfare. After stating that the "Congress has made a legislative finding that a national emergency exists," the opinion stated:

> Under conditions such as these the Court is bound to arrive at the conclusion that the peach industry is affected with a national public interest and that the Congress has the constitutional power to adopt appropriate legislation to cure these evils. The due process clause in such a situation cannot properly be construed to obstruct the national policy. Neither the Constitution nor the due process clause requires the perpetuation of conditions which impair the national vitality.
>
> To adopt the view that the Constitution is static and that it does not permit Congress from time to time to take such steps as may reasonably be deemed appropriate to the economic preservation of the country, is to insist that the Constitution was created containing the seeds of its own destruction. This Court will not subscribe to such a view.

Other courts, however, have not been so favorably disposed. In *United States* v. *Seven Oaks Dairy Company,*[17] the government argued that, since full regulation of the milk industry by a state had been upheld by the United States Supreme Court in *Nebbia* v. *New York* as "unobjectionable under the due process clause, there is all the more reason for upholding the regulation of the dairy industry under a nation-wide program, such as is exemplified in the AAA and the various milk licenses issued thereunder." But the Court said:

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[16] *United States of America and Henry A. Wallace* v. *Calistan Packers, Inc.,* Southern Division, U. S. District Court for the Northern District of California, 4 Fed. Supp. 660.

[17] District Court of United States, Mass., May 17, 1935, Equity No. 4068-69.

> . . . statutes regulating prices have been struck down in several instances because they were held to contravene the due process clause of the Fourteenth Amendment. . . . The right to contract freely, without unreasonable restraint by government, is one of the fundamental liberties of the individual which is protected by the Fourteenth Amendment to the Constitution. . . . This liberty is also secured by the Fifth Amendment. . . . It does not follow that because a state may have, in the stress of emergency, police power to regulate a business essentially private in its character, that the national government, under the commerce clause, has the same power. One is exercising a granted power, and the other a reserved power.[18]

Courts have rather generally taken the position that what might properly be done by a state in the exercise of its police power may not lie within the power of the United States to do, since the latter may act only within the range of powers delegated to it by the states. Powers not specifically delegated can be exercised only with reference to interstate or foreign commerce. Hence, attacks on AAA licenses have come to center chiefly around the question whether the business which they have sought to regulate is in fact interstate in character.[19] In eight fluid milk cases[20] the violator has been upheld on the ground that he had been handling and selling within the bounds of a single state a product produced wholly within that state—a business which is no part of interstate commerce.[21] In *United States* v. *Shissler,* however, the government's contention as to the interstate character of the business was accepted, and in *Seven Oaks Dairy Company* v. *Wallace* the Court seemed disposed to accept that view, although

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[18] See also *Royal Dairy Farms* v. *Henry A. Wallace,* Nov. 16, 1934, 8 Fed. Supp. 975 and F. R. Black, "Does Due Process of Law Require an Advance Notice and Hearing before a License is Issued under the AAA?" *University of Chicago Law Review,* February 1935, Vol. 2, pp. 270-90.

[19] Several recent articles are of particular interest in this connection, notably: Thomas Reed Powell, "Would the Supreme Court Block a Planned Economy?" *Fortune,* August 1935; John Dickinson, "Relations between the Nation and the

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States," *United States Law Week,* June 11, 1935; F. R. Black, "The Commerce Clause and the New Deal," *Cornell Law Quarterly,* February 1935, Vol. 20, pp. 169-84; T. W. Cousens, "Use of the Federal Interstate Commerce Power to Regulate Matters within the States," *Virginia Law Review,* November 1934, Vol 21, pp. 51-57; I. J. Williams, "Does the Commerce Clause Give Power to Dominate All Industry?" *University of Pennsylvania Law Review,* November 1934, Vol. 83, pp. 23-36; R. L. Stern, "That Commerce Which Concerns More States than One," *Harvard Law Review,* June 1934, Vol. 47, pp. 1335-66; E. S. Corwin, "Congress' Power to Prohibit Commerce," *Cornell Law Quarterly,* June 1933, Vol. 18, pp. 477-506.

[20] *Edgewater Dairy Co. et al.* v. *Wallace,* June 26, 1934, 7 Fed. Supp. 121; *Columbus Milk Producers Co-operative Association* v. *Wallace et al.,* Nov. 26, 1934, 8 Fed. Supp. 1014; *United States* v. *Neuendorf et al.,* Oct. 19, 1934, 8 Fed. Supp. 403; *United States* v. *Greenwood Dairy Farms, Inc.,* Sept. 27, 1934, 8 Fed. Supp. 8398; *Darger et al.* v. *Hill et al.,* Sept. 7, 1934, 76 Fed. 2d 198; *Kurtz* v. *Berdie,* Sept. 7, 1934, 75 Fed. 2d 898; *Douglas* v. *Wallace,* Oct. 17, 1934, 8 Fed. Supp. 379; *Royal Farms Dairy* v. *Wallace,* Nov. 16, 1934, 8 Fed. Supp. 975.

[21] In three of these cases (Douglas, Edgewater Dairy, and Columbus Milk Producers) the Court argued that what the license did in fact was to regulate the production of milk, that is, the business of individual farmers which in the nature of the case was an intrastate matter. Such a view places large emphasis upon such indirect influence as any part of the marketing system supported by a license (such as the base and surplus plan) has upon milk production. With almost equal plausibility, it might be argued that the fixing of railroad freight rates upon commodities moving from various local production points constitutes control of production of such commodities. Particular manufacturers and their local chambers of commerce are constantly seeking to secure the adjustment of rate structures in order to escape the disadvantageous effect of a differential or to secure some particular advantage under the rate structure. It has not, however, apparently ever been argued that, because of the direct effect of such regulation upon productive conditions, freight rate regulation constitutes production control and does not properly come within the interstate commerce powers granted in the Constitution.

not regarding itself as called upon to pass upon that issue.

The trend of judicial decision on the interstate commerce issue has seriously curtailed the ability of the AAA to carry through its market adjustment program.[22] The Dairy Section envisaged a comprehensive and harmonious adjustment of fluid milk and cream prices and such a systematic price structure is seriously impaired if all those milksheds whose boundaries lie within a single state have to be withdrawn from the market adjustment undertaking. In order to justify their claim to jurisdiction over all fluid milk markets, therefore, they have elaborated an argument to the effect that the milk, even of markets none of whose supply crosses state lines, is influenced by price-making forces nation-wide in extent. It is a well-known fact that fluctuations in consumption of whole milk in a given metropolitan market have a reciprocal effect upon the amount of milk skimmed for cream or used for ice cream or other milk products in that metropolitan area and that this in turn has direct repercussions on the amount of cream, ice-cream "mix," and other allied products which will move to that metropolitan consumption area from dairy regions, sometimes several hundred miles away, which are engaged primarily in the production of dairy products, such as butter, cheese, and evaporated milk. Since these latter lines of business are predominantly interstate in character, it is argued that the fluid milk business of every urban center in the country is in the true economic sense an integral part of interstate commerce.

[22] The issue has been largely limited to fluid milk licenses, since the business in fresh fruits and vegetables, dried fruits, nuts, and other commodities covered by the non-milk licenses is so predominantly and obviously interstate in character. With reference to canned products (peaches, ripe olives, and asparagus) the issue is not so clear and we shall return to it shortly in connection with our discussion of the fluid milk issue.

The lower courts have in several instances rejected this argument and in no case thus far has it come to the Supreme Court of the United States for decision. In many quarters, however, it has been assumed that the decision in the Schechter case clearly foreshadows an adverse decision were such an issue before that Court. The following passage from the Court's opinion is cited in support of this view:

> Much is made of the fact that almost all the poultry coming to New York is sent there from other states. But the code provisions as here applied do not concern the transportation of the poultry from other states to New York, or the transaction of the commission men or others to whom it is consigned, or the sales made by such consignees to defendants. When defendants had made their purchases . . . the poultry was trucked to their slaughter houses in Brooklyn for local disposition. The interstate transactions in relation to that poultry then ended. Defendants held the poultry at their slaughter house markets for slaughter and local sale to retail dealers and butchers who in turn sold directly to consumers. Neither the slaughtering nor the sales by defendants were transactions in interstate commerce. . . . The mere fact that there may be a constant flow of commodities into a state does not mean that the flow continues after the property has arrived and has become commingled with the mass of property within the state and is there held solely for local disposition and use. So far as the poultry here in question is concerned, the flow in interstate commerce had ceased. The poultry had come to a permanent rest within the state.

While the soundness of this view can hardly be questioned under the set of facts which the Court was then considering, it is not to be forgotten that the opinion proceeded to a broad view as to the federal government's power to regulate activities which merely "affect" interstate commerce. It was said:

> The power of Congress extends not only to the regulation of transactions which are part of interstate commerce, but to the

> protection of that commerce from injury. It matters not that the injury may be due to the conduct of those engaged in intrastate operations. . . . In determining how far the federal government may go in controlling intrastate transactions upon the ground that they "affect" interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle. . . . Where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people and the authority of the state over its domestic concerns would exist only by sufferance of the federal government.

In the light of the remark that "the precise line can be drawn only as individual cases arise," it would seem premature to assume that the Court would be certain to deny the validity of the AAA's claim that the operation of a marketing plan for fluid milk and cream in the city of Baltimore or Indianapolis is an inseparable part of the nation's interstate commerce in dairy products.

As for market plans designed to regulate the handling of fresh fruits and vegetables, dried fruit, and nuts, it is obvious that they concern commodities definitely in the current of interstate commerce.[23] When it comes to canned fruits and vegetables, it might be argued that the business of a cannery is a purely intrastate business and that the interstate commerce in canned fruits and vegetables is a distinct business which does not begin until the finished product is loaded in the cars for shipment.

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[23] It is interesting in this connection that the California state prorate act has been declared unconstitutional in a case involving lemon proration. The decision of the lower court was promptly upheld by the District Court of Appeals on the ground that it was an attempt to regulate interstate commerce.

However, the interstate character of the business covered by the three agreements in this group begins with the canning or even the growing of the product. In the language of the Schechter opinion, these commodities do not come "to a permanent rest within the state" at the canning factory but are "held, used, or sold . . . in relation to . . . further transactions in interstate commerce and . . . destined for transportation to other states." The Court sharply distinguished its decision with reference to the business of the Schechter firm from decisions which deal "with a stream of interstate commerce—where goods come to rest within a state temporarily and are later to go forward in interstate commerce—and with the regulation of transactions involved in that practical continuity of movement" and cited six decisions upholding laws regulating such business. Statutes of this character licensing handlers of agricultural commodities include the Cotton Standards Act, the Grain Standards Act, the United States Warehouse Act, the Packers and Stockyards Control Act, the Grain Futures Act, and the Perishable Agricultural Commodities Act. The broad definition of interstate commerce on which these measures rely may be seen from a reading of Section 1 (8) of the last named:

> A transaction in respect of any perishable agricultural commodity shall be considered in interstate or foreign commerce if such commodity is part of that current of commerce usual in the trade in that commodity whereby such commodity and/or the products of such commodity are sent from one state with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where sale is either for shipment to another state, or for processing within the state and the shipment outside the state of the products resulting from such processing.

In the Adjustment Act as first passed, both the marketing agreement and licensing clauses were made to apply to persons "engaged in the handling in the current of interstate or foreign commerce of any agricultural commodity or product thereof." As a result of early attacks on licenses drawn under this clause, an attempt was made to broaden the definition of interstate commerce in the amendments which were passed in April 1934. One of these amendments expanded the phrase "in the current of interstate commerce" to read "in the current of or in competition with, or so as to burden, obstruct, or in any way affect, interstate or foreign commerce." This new phraseology was accepted for the marketing agreement clause—Section 8 (2)—but the attempt to include it in the licensing provision—Section 8 (3)—resulted in a storm of protest on the ground that this would unduly enlarge the powers of the Secretary of Agriculture, and the section remained as originally written. Since the licensing provision in most cases is the only really effective means of carrying out any marketing plan, the amendment of Section 8 (2) was virtually meaningless and, in order to make a case, it was necessary to convince courts that the commodities brought under license were properly to be regarded as "in the current of interstate or foreign commerce."

In the new amendments introduced in the spring of 1935, the license clause was made to read the same as the marketing agreement clause as amended in 1934, that is, "in the current of *or in competition with,*[24] or so as to burden, obstruct, or *in any way* affect interstate or foreign commerce." Following the handing down of the opinion in the Schechter case, however, the marketing agreement

[24] In the committee print of the amended bill, this wording was changed to read "in *substantial* competition with." Before the bill was formally introduced, the whole phrase was stricken out.

section was again amended to apply *"only with respect to such handling* as is in the current of interstate or foreign commerce, or *as directly burdens, obstructs, or affects* interstate or foreign commerce in such commodity," and the section on orders (see Appendix C) which supersedes the old license section is couched in identical terms. This would seem to bring the phraseology of the act clearly into accord with the views expressed by the Supreme Court of the United States.

DELEGATION OF LEGISLATIVE POWER

We have had occasion to refer in the opening chapters of this book to the fact that the powers conferred upon the Secretary of Agriculture under Sections 8 (2) and 8 (3) of the Adjustment Act were of the most vague and general sort, that quite divergent views were entertained as to just what steps toward improving the farmer's economic position might be undertaken under these measures, and that in practice the Adjustment Administration elected to follow a rather aggressive course in developing measures of group marketing designed to advance farmers' prices as rapidly as possible to or toward the general goal of pre-war parity set up in the Declaration of Policy enunciated in Section 2 of the act.

The marketing agreement section of the original act simply authorized the Secretary "to enter into marketing agreements with processors, associations of producers. . . ." Except that they were "to effectuate the declared policy of the act," there was no stipulation as to what this thing referred to as a marketing agreement was or what provisions it might contain. In the process of administering the act, agreements of varied and in many cases elaborate character were developed, and the practice was immediately adopted of making these agreements binding upon nonsigners through the issuance of a license. In the case of the license provision, however, the delegation of legislative authority had been slightly more explicit than that in the marketing agreement section. It provided that "licenses shall be subject to such terms and conditions, not in conflict with existing acts of Congress or regulations pursuant thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof."

Two questions were open therefore: (1) whether there was a valid delegation of authority to the Secretary to make marketing agreements without specifying what they should cover or the methods of marketing adjustment which the Congress intended to authorize; and (2) whether there had in fact been any authorization to the Secretary of Agriculture to use the licensing power in support of the comprehensive devices for regulating the distribution of agricultural commodities which were embodied in the various marketing agreements. Could such arrangements be reasonably construed as "necessary to eliminate unfair trade practices or charges that prevent or tend to prevent" the return to parity prices and the "restoration of normal economic conditions" in the markets? When judges came to look at all critically at this situation, they felt that it did not. With reference to the price-fixing provisions of the Baltimore milk license,[25] Judge Chesnut came to the conclusion "that if Congress had intended to give the power to the Secretary it would have been definitely expressed rather than left to uncertain implication by the use of such a general phrase as the 'elimination of unfair charges.' " And as to the license as a whole, he said:

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[25] *Royal Farms Dairy, Inc.* v. *Henry A. Wallace,* District Court of Maryland, Equity No. 2265, Nov. 16, 1934.

> From this comprehensive review of the main features of the license plan, after considering its relation to the act as a whole, and with special reference to the scope of the power delegated to the Secretary by Sub-section (3) as to what terms and provisions the license may properly include, I reach the conclusion that the license as formulated is not within the statutory power delegated to the Secretary.

Similarly, in the Seven Oaks Dairy Company case, it was held that:

> The burden rests heavily on plaintiffs (the government) to remove substantial doubts respecting the authority of the Secretary of Agriculture, especially since the act fails in express terms to delegate to him authority to fix prices as a condition of his license. This omission in the act has been deemed adequate ground for denying the existence of any such authority. . . . The license must be held to be void and unenforceable for the reasons . . . that its scope has been carried beyond the limits of the law by regimenting production and fixing prices with respect to transactions that have no substantial or direct relation to interstate commerce.

In other cases, likewise, it has been argued that Congress could not abrogate its legislative function of specifying precisely those things which it intended that an executive department should do in carrying out the declared policy, and when the analogous issue arose in the Schechter case, the Court definitely took an adverse position to executive action without specifically delegated authority, saying:

> The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. We have repeatedly recognized the necessity of adapting legislation to complex conditions involving a host of details with which the national legislature cannot deal directly. We pointed out in

> the Panama Co. case that the Constitution has never been regarded as denying Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. But we said that the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained.

In the light of this decision, the Adjustment Administration decided that it would be wise to "spell out" in the statute the precise powers which Congress should authorize it to perform under marketing agreements and licenses. A year and a half of operating experience under the act had given administrative officials a much clearer understanding as to the types of activity which could be most effective in promoting the desired end of parity prices and the list of enumerated powers which they included in the amendments was substantially a statement of the various devices employed during this year and a half of operation. The full text of these amendments is to be found in Appendix C, but the principal provisions may be briefly decribed here. They fall into three classes—those applicable to milk, those applicable to fruits and vegetables, and those applicable to both. As for milk, the matters which may properly be covered include classifying milk according to use and payment under a uniform class-price system, or payment of a "blended price," equalization payments between handlers, a waiting period for new producers, checking of weights and tests, base and surplus plans, and minimum producers' prices. For "other commodities," authority is granted for grade, size, and quantity limitations; allotment of quotas to handlers and to producers; proration of shipments and equalization of losses on surplus not marketed or diverted to lower price uses; but not minimum prices to producers and resale prices. With reference to all commodities there may be provision against unfair competition or trade practices, price filing, and arrangements for setting up local supervisory bodies.

From the time of the decision in the "hot oil"[26] case forward there had also been a strong doubt as to whether such large regulatory powers, even if properly delegated in specific terms by the Congress to the Secretary of Agriculture for execution of its declared policy, could be by him delegated to private agencies such as control committees or other local supervisory agencies. In our chapter on administrative problems and procedures and elsewhere, we have stressed the strong desire of the Secretary of Agriculture and the Adjustment Administration to carry out the act in a spirit of "economic democracy," giving a large degree of local autonomy to producers and handlers of agricultural commodities to formulate their own marketing plans and to take the fullest possible measure of responsibility in carrying these plans into operation. Laudable and administratively practical as this course was, it led to a situation in which private bodies issued orders having essentially the force of law and which the government was called upon to enforce and defend in the courts.

Viewing the government claims with reference to industry self-government under the NRA somewhat critically, the Supreme Court in the Schechter case asked: "Would it be seriously contended that Congress should delegate its authority to trade or industrial associations or groups so as to empower them to enact the laws they deem to be wise and beneficent for the rehabilitation and expansion of their trade or industry? . . . And could an effort of that sort be made valid by such a preface of generalities as to permissible aims as we find in Section 1 of Title 1?" In answer to these questions, it is to be remembered that the statement of aims in the Adjustment Act is considerably more explicit than the generalities of Section 1 of Title 1 of the Recovery Act. Of more importance, however, is the contrast between the notorious looseness of administration under NRA and the administrative care with which the Agricultural Adjustment Administration provided that the terms of all agreements and licenses should be worked out with the collaboration of the AAA staff and be given a real rather than formal approval by section heads, the Administrator, and in many cases even the Secretary personally before being submitted for signature. Perhaps of still more importance are the provisions written into licenses, agreements, and regulations whereby acts of the local supervisory bodies must be promptly reported to the Secretary of Agriculture and are subject to his approval or disapproval. These provisions, taken with the system of field representatives discussed in the preceding chapter, meant that the Secretary did not turn the regulation of the industry over to trade groups not responsible to him but kept the reins of control in his own hands[27] at the

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[26] *Panama Refining Co.* v. *Ryan*, 293 U. S. 388.

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[27] As with most large administrative undertakings, in particular instances there have unquestionably been numerous slips in procedure which resulted in action being taken outside of regulations or in the absence of any specific regulation. This was particularly true in the early days when pressure for action was very acute and before time had revealed just what situations had to be met and the nature of the administrative rulings which would be necessary to cover the various cases. Undoubtedly, the pointed admonition with reference to such matters given by the Supreme Court in its decision on the Panama oil case caused the AAA to scrutinize again and improve its handling of these details.

Furthermore, what is said in this paragraph applies primarily to the adminsame time that he utilized the possibilities of helpful and informed participation by these trade representatives.

But however good or bad the position of AAA licenses under the old act, the Secretary of Agriculture and the Adjustment Administration decided, in the light of the position taken by the United States Supreme Court with reference to delegation of authority in the Panama case and the Schechter case, to abandon the license as a means of carrying out the marketing plan[28] and to substitute therefor "Secretary's orders."

In the hope of retaining the constructive participation of local interests as fully as possible, the marketing agreement is continued as the instrument in which the marketing plan developed through the collaboration of local interests and representatives of the Adjustment Administra-

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istrative situation with reference to special crops licenses rather than that found under fluid milk licenses. There, as we have seen, the local committees have never been brought to an effective state of functioning. While market administrators directly representing the Secretary have been installed in the various markets, they have not in general established intimate and effective working relationships with the commercial agencies in their markets. In many places, the situation has lapsed back to that obtaining before the coming of the AAA, with the market actually run under the joint influence of producer co-operatives and the large distributors' organizations, with the Secretary neither promptly and fully informed, nor effectively in control of the situation.

[28] In the first draft of the 1935 amendments (prior to the Schechter decision) the Adjustment Administration had broadened the statement with reference to the licensing power so that it might be invoked not merely to eliminate unfair practices or charges but also "to make effective any marketing plan set forth in any marketing agreement . . . signed by the persons handling not less than 50 per centum of the volume of business done in the respective classes of commercial activity specified in such agreement" or with the approval of the President even if the support of less than 50 per cent of the industry could be secured, provided it is approved by at least two-thirds of the producers and the Secretary determines it to be the only "practical means of advancing the interests of producers of such commodities pursuant to the declared policy." As will appear from a reading of the present amendments (Appendix C), this threefold distinction has been preserved under the system of "Secretary's orders."

tion is set forth. Under this as a constitution, local supervisory bodies will be set up by appointment of the Secretary, and they will deliberate and decide upon the course of action which in their judgment would best promote their effort to secure parity prices. The essential difference in procedure[29] will be that prorates, shipping holidays, grade restrictions, assessments, minimum prices, or other measures promulgated in accordance with this plan will not be formally upon order of the chairman and secretary of the control committee (subject to the veto of the Secretary of Agriculture) but will probably be under an order of the Secretary.

PROSPECTS OF ENFORCEMENT IN THE FUTURE

It is the theory of the draftsmen of these provisions that under the amended act Congress has expressly exercised its legislative discretion in favor of the use of any or all of a comprehensive and specific list of marketing and price-determining devices; that since it cannot in the nature of the case take legislative action as to the precise device to be used in a given case or the precise time at which it shall be applied, it has authorized the Secretary through his duly appointed representatives to make such determination and to apply any of the prescribed measures when and as he

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[29] The amendments likewise alter the scope of the act. Whereas the old agreement and license provisions related to any agricultural commodity, the new "Secretary's orders" provisions apply only "to milk, fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning), soybeans, and naval stores as included in the Naval Stores Act." The exclusion of canning crops was effected as a result of the resolution of protest adopted by the National Canners' Association at a special meeting assembled in Washington in May. The exclusion of apples is understood to have resulted from the personal efforts of Senator Byrd of Virginia, long an opponent of the AAA and reputed to be the largest single apple producer east of the Rocky Mountains. Although they had not previously been parties to a marketing agreement, soybean interests were desirous of being included in the act.

"has reason to believe that the issuance of an order [embodying such measures] will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified" in the amended act. Such an order issues only after public hearing and is based "upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required [by the act])." In the hope of continuing the helpful participation of many local interests, and in view of the complexity of the devices involved, numerous sections of the act, instead of laying down a definite rule of procedure with all the inadequacy and inflexibility which it would entail, simply provide that the Secretary may set up an auxiliary agency for determining the course to be taken. Thus, instead of providing that the Secretary through his administrative officers or assistants must prorate shipments, hold reserve tonnages, allot quotas, or take any other of the steps authorized, the law provides that his powers include "limiting or *providing methods for the limitation* of the total quantity of any such commodity . . . allotting, or *providing methods for allotting* the amount of such commodity. . . , determining, or *providing methods for determining* the existence and extent of the surplus of any such commodity. . . ." Thus, there would be a practical division of labor between local interests intimately informed as to the operative conditions within an industry and official representatives of the Secretary of Agriculture in the Adjustment Administration in the complicated task of carrying into practical operation the measures affirmatively set forth by Congress in the act. We have noted, however, in our discussion of administrative problems (page 264) that it will probably be necessary to have quotas and allotments issue directly from the Secretary.

The vagueness and inadequacy of the market adjustment provisions of the act of May 12, 1933 and the lack of articulation between Sections 8 (2) and 8 (3) were the cause of a great deal of confusion in the Adjustment Administration and led to a certain amount of friction between the various commodity sections and the General Counsel's office. Men in the commodity sections had rather positive ideas as to the kinds of marketing plans they wanted put in operation and were inclined to assume that the broad and loose statements of the marketing agreement section of the act gave them a free hand to proceed with these plans. The General Counsel, while manifesting every indication of a desire to see broad powers exercised under the act, was concerned to see that the precise terms of agreements and licenses were so definitely related to the economic conditions and needs in the several industries as to present strong cases when eventually they would be brought before the courts for review.

Policy with reference to litigation had to win the approval of the Department of Justice, and considerable difference of opinion developed among the various lawyers. On one side were those who urged a "safe" policy with a minimum risk of having the act declared unconstitutional even though its usefulness might be seriously restricted. On the other side were those who wanted to follow an aggressive policy of broad use of the powers sketched in the act, and, when litigation arose, to rely upon the presentation of a case so economically impregnable as to assure a broad constitutional interpretation by the Court.

The Department of Justice was naturally concerned with the problem of avoiding defeat for any major part of the New Deal legislation. As a matter of policy, it decided it would be better to have as long a period of time as possible elapse before any of the key statutes were subjected to a final test in the courts. Even then, it was planned to present first a case in which the interstate character of the business was unequivocal. On this ground, cases under the Agricultural Adjustment Act were to be deferred to second or third place. Meanwhile, it was hoped that the actual operation of the agreements and licenses would have demonstrated their reasonableness and conformity with the broad policies enunciated in the act.

Advocates of a different strategy have argued that it would have been more astute to crowd enforcement cases along to the earliest possible adjudication on the theory that in the early days of the act the courts would have been most fully under the sway of the general economic emergency sentiment and most likely to give a broad interpretation with reference to the act and its constitutionality. Perfecting amendments were drafted in the spring of 1934 and some of these were pressed by the Administration. The bill that was finally introduced, however, was not very thoroughgoing, and even the amendments which it contained were only in part accepted by the Congress. In fact, the congressional refusal to accept the broader interstate commerce clause for inclusion in the licensing section left the enforcement position after April 7, 1934 worse rather than better than it had been before.

In the wake of unfavorable decisions in several lower courts, enforcement of the milk licenses in Baltimore, Chicago, Indianapolis, Providence, Oklahoma City, and Port Huron became practically impossible,[30] and the licenses were cancelled. After the handing down of the decision in the Schechter case, there was a still further tendency for licensees to disregard the terms of their licenses on the assumption that this NRA decision foreshadowed an adverse ruling from the United States Supreme Court as soon as any AAA licenses might come before it. Meanwhile, the California and Washington state prorate laws have been held unconstitutional in both the lower and the appellate courts, and the Oregon law by the lower courts. Thus enforcement of the old law was practically brought to a standstill during the summer months of 1935.

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[30] With reference to the milk license enforcement situation in general, see Black, *The Dairy Industry and the AAA,* Chap. V.

Passage of the amendments of August 24 lays the foundation for such a reversal of this trend, but it must be followed by a prompt working out of the administrative arrangements to be put in force under the new system of "Secretary's orders." Likewise, there must be a further decentralization of administrative personnel so that the requirements under the amended act could be made entirely clear to all handlers and every violation discovered and followed through with a prompt and decisive campaign of enforcement. The Administration has nothing further to gain by any policy of delay. Congress has made such changes in the statute as it saw fit in the light of two years of operating experience and a variety of judicial opinions both on the AAA and the NRA. Unless the procedures adopted by the Adjustment Administration can be established in the highest court as being in conformity with the present act, and this act as being in conformity with the Constitution, it seems clear that the use of these methods of "market adjustment" must be promptly abandoned.

CHAPTER XIII

REGULATORY PROVISIONS AND NEW MARKET MECHANISMS

While higher prices paid by processors and consumers were looked to as the major source from which larger returns to farmers might be secured under marketing agreements and licenses, reductions in marketing charges were also considered. Framers of the act, legislators, and administrative officials have all advanced the thought that it would be feasible and appropriate for processors and trade agencies to forego some part of the margin between consumer and producer prices which, left to the free force of competition, they were able to secure for themselves.[1] Besides restricting distributors' charges where this seemed possible and reasonable, thus securing a second source from which producers' net returns might be increased, some persons consistently have held the view that the marketing agreement and license powers should be utilized to accomplish a rather thoroughgoing program of market reform in which any and all abuses that have crept into the practice of trade agencies should be attacked and, if possible, eliminated, and new and higher standards of commercial equity and market economy, as well as improvement in the technical quality or the wholesomeness of the products handled, should be brought about.

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[1] See pp. 17, 20, 199. Sometimes the argument runs chiefly in terms of needless duplication of facilities, but generally there is a belief explicit or implicit that superfluous facilities are the accompaniment of high marketing charges or wide spreads and that reducing these would remove excessive facilities. Mordecai Ezekiel, economic adviser to the Secretary of Agriculture, has given us a rather comprehensive statement of the market reform view of the Adjustment Act. "One other serious problem of agriculture is that involved in the high cost of marketing and in the slackness and waste now present in many types of marketing activities. In the duplication in the distribution of fluid milk, in the wholesale and retail sale of meats, and many other places, there are glaring cases of excessive capacity and duplication of facilities which do not profit the individual selling agencies and which do add to the cost of marketing which farmers and consumers must share. . . . Some of our marketing agreements have made some improvement along the line of increasing the marketing efficiency through improved stability, increasing the use of proper grades and standards and correcting unfair and discriminatory practices." He adds that progress in this direction is at present "retarded by the fact that really increased marketing efficiency would mean . . . large numbers of men displaced to seek employment elsewhere. . . . In this, as in many other phases of the program, the problems whose solution must be left to the future are not less important than those which we are grappling with today." Address before National Association of Marketing Officials, New York City, Nov. 15, 1934, *AAA Press Release No. 973-35,* pp. 15-16. See also footnote 13, p. 310.

There has been a considerable degree of disagreement on this particular point among the administrative officials of the AAA, the Consumers' Counsel, the office of the General Counsel (prior to the reorganization of February 1935), and certain officials of the Department of Agriculture not directly attached to the Adjustment Administration. In the early days of marketing agreement experience, there was a drive to secure the inclusion of pure food requirements and assertion of the right of the Secretary to examine books and records in such a broad way as to constitute "fishing expeditions" for the purpose of securing evidence for a general purge of commercial and industrial practice as related to agricultural commodities. This action was strongly resisted by various trade groups, notably tobacco manufacturers, meat packers, canners, and milk distributors.

Something of a retreat from this position has taken place with the process of time. It is to be attributed in part to a changing interpretation of what is legally permissible under the act and in part to issues of practical expediency. The present administrative staff has learned in the hard school of experience the unwisdom of trying to fight on too many fronts at once.

It has recognized the enhancement of farmers' returns as the major and primary, if not the exclusive, purpose of the act and has been willing to let the sleeping dogs of commercial practice lie, as far as this is possible without jeopardizing the success of its major undertaking. Even with this limitation, however, there were four general types of regulatory control over market practices to be found in the marketing agreements and hence in the licenses made standard practice for whole distributor groups:[2] grading, standardization, and inspection; storage fees, processing rates, and marketing charges; "fair trade practices"; and reports, accounting, and access to books and records.

GRADING, INSPECTION, AND CHECKING

Slowly but persistently over a period of some decades a movement has been growing up under the United States Department of Agriculture and various state and municipal agencies and certain commodity exchanges toward the development of technically accurate and comparable standards for agricultural products and for an efficient inspection service for putting these standards into operation for all products moving through the commercial markets. The work has reached its fullest development in the case of staple commodities dealt in on futures exchanges, notably grain and cotton; but by 1933 it had made very substantial progress even among the perishables such as fruit and vegetables. Likewise the growth of co-operative marketing agencies had been accompanied by considerable development of grading practices, and a similar standardization had been brought about through certain private trade agencies such as canners' associations. Where such standards have already been made compulsory through legislation, their use in marketing agreements and licenses of course does nothing to change existing practice. But where they have come into vogue only through the voluntary efforts of co-operatives or private distributors, the license, in so far as it is enforced, makes them effective for the whole commercial movement and thus removes the unfair competition which comes about through ambiguity as to the product being dealt in.

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[2] This is to be differentiated from the controls set up in the several codes under the NRA in which the AAA has to a limited extent participated. The codes placed large emphasis on wage and labor provisions which were designed primarily for the protection of labor. They included also fair trade practice provisions which, though concerned primarily with equitable and profitable conditions for the trader, had some repercussions on the farmer through their influence on distributive charges or the determination of competitive practice. In fact, some of the trade practice provisions of the codes overlapped or duplicated provisions of marketing agreements and licenses.

In other cases, however, where difficulty had been encountered in the effort of standardization agencies to secure the acceptance of grading and inspection, the inclusion of a provision of this sort, though introduced primarily for the purpose of facilitating the administration of shipment control, has far-reaching effects upon the manner in which the commodity is handled. The general history of past standardization effort suggests that once such practices have been put in operation for a period of even a few years, it is likely that they will establish themselves permanently.

There is great variety as to the form of standardization provisions and the manner in which they are introduced into the agreements. In some cases they are simply incorporated in the definition of the commodity (California asparagus, shade-grown tobacco, walnuts, cling peaches). In other cases, such as Florida strawberries and Southeast potatoes, the grading and inspection are incidental to other administrative provisions of the agreement, since they are based on the withholding of specified grades from shipment. The provisions of the Florida agreement are:

> Section 1. Strawberries shall be packed and graded in accordance with the United States grades and standards, and no strawberries shall be shipped which have not been so graded and packed. Each container shall bear the United States grade of its contents, or the brand or trademark representing such United States grade, if such brand or trademark, with the specifications thereof, has been registered with the control committee for at least ten days prior to its use.
>
> Sec. 2. Each shipment of strawberries from Florida in whatever quantity shall be inspected by and its conformity to said grades and standards certified by authorized representatives of the federal state inspection service: *Provided, however,* That such inspection and certification shall be required only on and after such date as the control committee may designate in each shipping season.

The Southeastern watermelon agreement provides that the use of United States grades may be required by order of the control committee. This provision has been called into use during the current season.

In some cases where government grades have not been developed, standardization under the control committee has been rather fully worked out in marketing agreements. The prune agreement provides that it shall be the duty of the control board to "define, establish, and promptly announce the specifications for grades of standard and sub-standard prunes, and, subject to disapproval by the Secretary, fix and promptly announce for each year's crop the tolerances for off-grade prunes permissible in standard prunes."[3] The raisin agreement is essentially similar to the prune agreement. With respect to each crop the control board defines standard, sub-standard, and inferior raisins and announces such definitions. It grades allegedly sub-standard or inferior raisins, and determines therefor maximum differentials below minimum prices for standard. The control board selects qualified raisin graders.

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[3] The section on definitions covers not only "standard" and "sub-standard" prunes but also "off-grade" prunes and "culls." Art. VII, Sec. 12 (11).

The Florida citrus marketing agreement contained separate sections requiring the use of United States grades and inspection, and the Texas agreement provides for inspection under the Texas standardization law. Similar provisions became an important part of the peanut and Southern rice agreements since lack of proper grading had been a source of serious abuse. The first Southern rice agreement provided:

> If and when the Secretary determines that compulsory federal-state grading is necessary to protect the interests of producers of rice, the millers hereby agree that upon notice by the Secretary, in such manner as he shall determine, they will thereafter purchase no rough rice which is not accompanied by a certificate issued by a federal-state grading office.

Such federal grades became effective a few months later. Similarly, the Connecticut Valley shade-grown tobacco agreement provides that "after the Bureau of Agricultural Economics shall have adopted a schedule of standard grades for tobacco, all tobacco of the 1933 and subsequent crops sold by contracting handlers shall be graded in accordance with such schedule of grades by an official inspector." Federal grades accordingly became effective with the beginning of the 1933 crop movement.

The California date shippers' agreement requires grading of the product in accordance with an elaborate set of specifications attached to the agreement and also conformity to the pure food laws of the United States and California. Subsequently a schedule of package standards was adopted by the control committee pursuant to a provision in the marketing agreement and this was approved by the Secretary of Agriculture as an amendment. Consumer standards were likewise contemplated in the rice agreements, which provided that if the Secretary of Agriculture should establish consumer standards the millers would abide by them "in the preparation of the contents and labeling of consumer packages."

On the whole, it would appear that grading and standardization provisions are receiving increased emphasis as the marketing agreement phase of the AAA work goes forward. Grading and inspection provisions have been included in all recent agreements and their basic importance in the two tomato agreements tentatively approved on March 11, 1935 was emphasized in the announcements of these agreements.[4] Similarly "the purchase of cream on a graded basis and a class and grade labelling of butter sold at retail were the underlying points in a quality improvement program sought in a proposed butter marketing agreement for the West Coast and Mountain states."[5]

Marketing agreements and licenses have also been availed of as a means of forwarding the work of standardization of packages and containers which has been under way for many years in the United States Bureau of Agricultural Economics and the Bureau of Markets which preceded it. We have already noted the requirement in the Florida strawberry agreement for standard pack as well as grade. Amendments to the western Washington vegetable agreement, submitted in March 1935, contained a provision covering standardization of containers, as follows:

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[4] "The tentatively approved agreement is intended to improve returns to growers by requiring all shipments to be graded according to the United States standards, and to be inspected and certified by the federal-state inspection service. The agreement also provides for the withholding of inferior grades and sizes when in the judgment of the control committee such action is necessary to improve returns to growers." *AAA Press Release No. 1740-35.*

[5] *AAA Press Release No. 1771-35.* This agreement was not brought to the effective stage (see p. 197), but the 1935 session of the state legislature of California sets up four standard grades of butter and prohibits the sale for table use of any butter scoring 88 points or below.

> All shipments of fresh lettuce, peas, and/or cauliflower shall be packed only in containers which meet the specifications prescribed for the respective crops by the control committee, subject to the prior approval of the Secretary: *Provided,* that in case standards have been or shall be promulgated for any of such containers under the Standard Container Act of 1928, the specifications prescribed by the control committee shall conform thereto.

Such efforts to standardize containers are aimed primarily at the protection of the consumer, but they also benefit reputable distributors and producers by freeing them of the uncertainty and added expense involved in the use of odd-sized or peculiarly shaped packages, many, if not all, of which are designed to mislead the buyer. Clearly intended to protect the producers against sharp practices on the buyers' part was a standard measure provision included in the Southern rice marketing agreement (now cancelled). This was designed to eliminate abuses growing out of the system of buying on a lump-sum basis. The clause provided that: "All rough rice shall be purchased in units of barrels or bushels, and no miller shall purchase rice round, or by sack, bag, stack, or lump sum." [6]

A similar development in the field of fluid milk marketing has been designed to protect the producer against short weights or dishonest tests on the part of distributors. In the older and more highly organized markets, hit-or-miss methods had largely passed away in response to the efforts of producers' organizations and municipal health departments. As a result, milk was handled on a basis of strictly defined sanitary standards and known butterfat content. The accuracy and honesty of weighing had been safeguarded to some extent by the regulatory activities of municipal or state sealers of weights and measures, and the honesty of both weights and butterfat tests assured by having them rechecked by representatives of the co-operative associations. In some of the smaller markets where these developments had been absent or tardy, the widespread use of licenses for milk distributors has effected a considerable reform in market practice, and even in larger cities the use of the license made these safeguards apply to all handlers of milk, thus tending to eliminate the gouging of producers and the unfair competition sometimes practiced by the less reputable distributors.[7]

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[6] In the article of the agreement giving definitions, "barrel" is defined as 162 pounds of rough rice; "bushel" as 45 pounds. "The terms 'sack or bag' mean every container of unknown, irregular, or random weight, 'stack or lump sum' mean without respect to quantity, quality, or condition, and 'round' means purchased without respect to grade."

Besides the checking of weights and tests, there is also the problem of verifying the dealers' reports as to the actual disposition of products in accordance with the class-price plan of payment discussed in Chapter X. Thus far no specific control devices which would cover this item have been incorporated in licenses. Sworn reports are called for and, as a matter of administrative precaution, these have sometimes been supplemented by a "spotter" at the distributor's plant. If the classification plan is to be made fully effective, however, it may prove that checking of actual deliveries will be quite as important as checking

[7] In this connection, mention may also be made of the provision contained in the proposed Texas-Mississippi tomato marketing agreement governing the way in which shippers were to conduct their buying operations and account to the producer. The section read: "Each contracting shipper agrees that in buying tomatoes from any producer or in accounting to any producer for tomatoes handled in any manner for the producer's account, that such buying or accounting shall be on a basis of (1) the amount of tomatoes actually packed, or (2) an inspection by, or under the supervision of, a representative of the federal-state inspection service."

of weights and tests and a matter properly to be covered in the Secretary's order.

SERVICE CHARGES

Many marketing agreements include provisions regulating service charges.[8] Such regulations fall into two general classes according to the purpose for which they are included. First are those limiting charges made by distributors or processors for the purpose of preventing the enhancement of such charges and thus depriving the producer in part at least of the benefit of such price advances as may be brought about. The commonest form of this provision is that which provides that the grower shall not be charged for any service a price in excess of the average price charged by the shipper for the same service during the previous three shipping seasons unless permitted to charge a higher rate by the control committee.[9] Such modification must be based upon a showing on the part of the shipper that his labor or material costs have been increased or that additional service is being given with "commensurate benefit to the growers." In several recent agreements co-operative associations operating on a strictly non-profit basis are excepted from this provision. In the case of three California agreements (Tokay grapes, Gravenstein apples, and deciduous tree fruits) the provision relates to handling the product on consignment and the maximum charge is placed at 7 per cent of the gross delivered price of 10 per cent of the net price f. o. b. California,[10] the rate common in the industry.

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[8] "In connection with fixed resale prices or their omission, 'service charges' such as commissions and handling, storage, and financing fees, will be carefully scrutinized." *Statement of General Policies Governing Marketing Agreements,* AAA, Sec. II (7), Sept. 20, 1933.

[9] In the 1934 Florida citrus agreement, the basis of the charge was changed to the average price charged by the shipper during the previous shipping season or, if he was not then engaged in business, "the average price customarily charged by shippers in the same locality."

The Northwest deciduous tree fruit agreement accepts in principle the propriety of regulating charges which handlers can make to growers as commissions for services, but refrains from establishing such rates because of the "different conditions and practices in the different districts with respect to the various fruits." However, it provides that:

> the control committee shall make the necessary study and collect the necessary data at its earliest convenience to prepare and submit to the Secretary for approval a schedule of maximum charges for services of every kind rendered by the handlers incident to the marketing of fruit, and the parties agree that such schedule, when approved by the Secretary, shall become a part of this agreement. Pending the approval of such a schedule of maximum charges, no handler shall charge any grower as a commission, or otherwise, for his services in completing a sale of fruit in excess of the prevailing charges for similar services in the district involved as evidenced by existing practices.

As for brokerage charges to be paid at terminals:

> The commodity committees shall determine and publish schedules of maximum uniform charges which can be made or paid by handlers for brokerage services rendered at terminal points, and charges for any other brokerage service, including services rendered in connection with sales made outside of the continent of North America.

The second purpose for which regulation of service charges is used is to prevent the evasion of minimum price schedules through low credit rates, the giving of free or cut-rate storage, or other extra services gratuitously. Several agreements have prohibitions against such practices. For instance, the Northwest deciduous tree fruit agreement provides:

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[10] Or in the case of Gravenstein apples, the alternative of 10 cents per box. The grape agreement provides also that "on all sales made outside the continent of North America charges for foreign brokerage may be deducted in addition."

> No handler shall furnish storage services of any kind to buyers for less than the minimum rates established for such services, and any reports of sales made on a storage-paid basis shall indicate the amount of the storage charge included in the price.[11]

The peanut agreement had a detailed section covering charges to be made for storage which was designed to put all parties on a basis of competitive equality in the market. We have already noted, however, that in the summer of 1934 the rates actually charged to the farmer were so stepped up as to constitute a substantial reduction in the minimum prices which he was supposed to receive under the agreement.

There are two important classes of service charges in the handling of milk, namely transportation charges and plant charges at receiving stations. These are not, however, simple service charges paid directly by the producer to the distributor; like other of the economic relationships in the fluid milk market they have undergone a process of conventionalization. For example, distributors may settle for the various producers' milk according to a system of differentials based upon geographic zoning. As a result a given dairyman may bear a transportation charge which corresponds only indirectly with the transportation service actually rendered in bringing his milk to market. Some distributors may collect milk in cans by truck and others may transport it in bulk in motorized tanks. Cost of such service may vary considerably and yet the charges be the same. Similarly, different parcels of milk may receive quite different handling at a single plant or be handled at different plants, some large and some small, some better equipped and some not so well equipped, and yet all bear uniform plant handling charges or charges which, though they differ, do not differ in proportion to either the cost or the value of the service rendered. Sometimes there are also standardized charges for use of containers, for icing, and the like.

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[11] "The control committee shall fix schedules of maximum and minimum charges for packing and storage services and such charges shall be on a uniform basis intradistrict and as nearly as possible interdistrict." Art. XI, Sec. 2.

In general, the milk marketing agreements and licenses thus far have accepted prevailing schedules for such charges with little or no modification. To some extent, the system of payment provided under the license has modified the service charges of dealers whose operations previously were not covered by any collective bargaining arrangement. Such dealers might offer producers prices nominally higher than the prevailing rate but offset such differentials by higher trucking rates or plant charges. Since the milk of a given market is often handled in a variety of ways in which all the services are sometimes performed by a distributor and at other times divided among distributor, co-operative or private country plant, and co-operative, private, or producer transportation agency, the changing of service charges tends to modify the competitive relationship of the several agencies. Experimental studies have been made by the Adjustment Administration at a few points to test the reasonableness of present charges and whether they are equitable as among the various parties. It seems likely that if the licensing system should be put upon a more permanent basis, the regulation of such charges may be actively undertaken.

FAIR TRADE PRACTICES

Besides provisions regulating service charges to producers, many agreements have provisions covering fair trade practices.[12] They are an accompaniment of provisions governing the resale price of the product. Although they deal with matters that concern the distributor or processor in his relations with the consumer or other purchaser of his product, they are not without significance to the grower.

Fair trade practice provisions in the various marketing agreements differ considerably in form. They range from the very simple type found in the milk marketing agreements to the elaborate provisions used in canning crop agreements. The milk marketing agreements banned as unfair:

> . . . any method or device whereby fluid milk is sold or offered for sale at a price less than stated in the agreement, whether by any discount, rebate, free service, merchandise, advertising allowance, credit for fluid milk returned, loans or credit outside the usual course of business, or other valuable considerations, or combined price for such milk, together with another commodity sold or offered for sale (whether separately or otherwise), whereby a subsidy is given for either business or information or assistance in procuring business.

The trade practice section in the Florida and Texas citrus agreements prohibits inducing breach of contract, making misleading statements, the use of oral contracts, or the payment of brokerage to buyers or any brokerage above the established rate. The first cling peach agreement contained an article more than two pages in length covering general trade practices with sections relating to rebates and concessions, open prices, classification of customers, terms of sale, brokerage arrangements, label and shipping case allowances, "swells" allowances, standards of grades, price guaranty, future contracts, deceptive practices, injury to competitors, sanitation inspection, and inspection of the finished product. The second cling peach agreement abandoned the naming of resale prices and these provisions were dropped, but a somewhat similar trade practice section is to be found in the ripe olive canning agreement. Likewise the Southern rice-milling agreement laid down trade practices rather minutely in two articles entitled "terms of sale" and "brokerage."

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[12] This term as used in marketing agreements is much more narrowly restricted than it was in NRA codes or in general usage. For example, many of the matters which we have dealt with in the section on "service charges" are often treated as part of fair trade practice provisions.

Since the naming of resale prices is now contrary to AAA policy and excluded from the provisions of the amended act, fair trade practice provisions are of minor and declining importance. So far as many of the commodities covered by marketing agreements and orders are concerned, these matters are already in large part covered by the Perishable Agricultural Commodities Act and there would seem to be no good reason why this statute could not be broadened to cover all agricultural commodities moving in interstate commerce.

SECURING REPORTS AND ACCESS TO BOOKS

The most controversial of all provisions affecting marketing practices are those relative to the making of reports and the granting of access to the books and records of distributors or processors. We pointed out in Chapter XI that as a mere administrative matter every agreement and license must contain some requirement of this kind if regulation is involved. It is impossible to know whether the various provisions are being complied with or to measure the extent to which they are effectuating the purposes of the act unless the Adjustment Administration has a record of transactions before it.

Opinion has differed sharply, however, as to how full a record is necessary for this purpose and how wide was the scope of authority conferred by Congress on the Secretary of Agriculture to compel these concerns to reveal the details of their operations. To a considerable extent, the matter hinges upon the interpretation of the act as merely a measure for the enhancement of prices to producers or as a more ambitious attempt to secure economic reform of the distributive agencies and of the practices of processors of agricultural products. As indicated in the introductory section of this book, the larger view was held by a considerable and influential group in the early days of the Adjustment Administration. Besides those who hoped to use licenses as a means of reforming existing practices of the trades, others viewed it as a necessary effort to a safeguard against the abuse of powers of further consolidation conferred in the Adjustment Act. One of the spokesmen of this view has recently expressed it as follows:

> In essence our position was that the forces of competition should be encouraged and kept open wherever possible in order to hold distributors and processors' margins within reason and thus protect the consumer. Wherever monopoly privileges were granted by agreements, contracts and licenses—in virtually every case—we felt the AAA should exercise strict supervision over the processing and distributing industries involved and should have complete access to all their books and records. Only in this way in our opinion would the farmers and consumers have a chance of getting a fair deal at the hands of the giant food processing and distributing industries.[13]

As a practical matter, however, any attempt to have the Adjustment Administration "exercise strict supervision of the processing and distributive industries involved . . . and have complete access to all their books and records" would imply a regulatory task of quite impossible dimensions. It seems clearly to lie outside the intention of Congress in passing the act and is certainly outside the administrative policy of the present Administrator. The effort has been made in all agreements to include reasonable but adequate provisions covering the making of reports which will keep the Adjustment Administration properly informed as to operative results and will concede to the Secretary the right to such access to books and records as is necessary to detect and prevent evasion of the terms of the agreement. Where signatories have not been able to agree on a statement which seems adequate to the administrative officers, the practice has been to go as far as possible in the voluntary agreement and then to incorporate the full statement in the license. For example, the raisin marketing agreement contained a section obligating the contracting packers to furnish the Secretary with reports which would enable him to ascertain the extent to which the declared policy of the act and the purposes of the agreement were being effectuated, followed by a provision that:

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[13] Gardner Jackson, formerly on the staff of the Consumers' Counsel of the AAA, *Washington Star,* Mar. 3, 1935. It will be noted that this theory of the regulatory force of free competition is not the same as regulation under government discretion advocated by Mr. Ezekiel. See note on p. 295.

> The contracting packers also severally agree that, for the same purpose, and/or to enable the Secretary to verify the information furnished him on said forms of reports, their books and records and those of their affiliates and subsidiaries (relating to matters concerning this agreement) shall during the usual hours of business be subject to the examination of the Secretary.

The raisin license omitted the parenthetical phrase "relating to matters concerning this agreement" and read "all the books and records . . . shall . . . be subject to the examination of the Secretary. The Secretary's determination as to the necessity of and the justification for any such examination shall be final and conclusive."

The fact that the present Adjustment Administration officials take a restricted rather than an expansive view of this matter is indicated by the phraseology of the amendment which they have proposed (see page 259) to bring this matter out of the realm of mere administrative policy and within the specific provisions of the act. They stipulated that the requiring of reports and the granting of access to "such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda" as he deems relevant is conditioned upon the Secretary's need "to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title . . . and to determine whether or not there has been any abuse of the privilege of exemption from the anti-trust laws." Thus the power is deprived of any direct connection with market reform plans.

It should not be assumed, however, that this phase of the market adjustment undertaking is without any significance with reference to the evolution of our marketing institutions and practices. The fuller knowledge of actual price and cost-of-marketing conditions and forces gained through such reports and investigations would almost certainly influence the stipulations included in subsequent marketing agreements or Secretary's orders. It might likewise lead to further measures designed to bring about uniform accounting systems such as have been adopted by the Interstate Commerce Commission, or to recommendations for specific legislation designed to improve some of the conditions which in the light of this fuller knowledge seem clearly to be unsatisfactory.[14]

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[14] Such an outcome would be analogous to that under the Grain Futures Administration. The Grain Futures Act did not set up a scheme of regulation of the grain market but required rather comprehensive reporting of the actual

RECONSTRUCTION OF MARKET MECHANISMS

It seems clear that the Adjustment Act, even in its marketing agreement and licensing sections, was designed as a measure for enhancing and stabilizing agricultural income at the level defined as pre-war "parity" and not as a means of reforming market practices. The latter task has been undertaken under a considerable number of federal statutes covering standard grades and containers, service charges, reporting of transactions, and regulation of commercial practices. Several of these operate through the licensing power and at least two of them (the Packers and Stockyards Control Act and the Perishable Agricultural Commodities Act) constitute quite comprehensive regulatory measures. With others, notably the standardization acts as related to perishables, it is doubtful whether progress will be most rapidly promoted by making market practices compulsory under orders rather than keeping them on a voluntary basis. Probably reform of specific practices will be most comprehensively and flexibly developed by continuation of the evolution of these separate lines of attack rather than having them superseded by an inclusive license or "Secretary's order" statute. At the same time, attempts to carry out any marketing plan frequently reveal situations in which the incidental use of market practice regulations similar to and sometimes based upon these other statutes has a considerable supplementary value. As already pointed out in this chapter, numerous agreements and licenses have tended to expand and accelerate the use of grading, inspection, and other similar measures for the improvement of handlers' practices.

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course of trading as a means of ascertaining what regulatory measures, if any, might be required.

In a somewhat different sense, however, marketing agreements and licenses seem to have for certain commodities the possibility of constituting rather sweeping agencies of "market reform," as some people use the term. It can perhaps better be described as market reorganization. Instead of merely prescribing the detailed manner in which old functions should be performed and standardizing and policing these market practices, the new marketing plan for Connecticut Valley shade-grown tobacco and for fluid milk in certain markets where an equalization pool or base-rating plan was introduced results in the virtual substitution of a new marketing method. The introduction of an open-price system and the segregation of reserve tonnages to be administered by representatives of the whole industry (walnuts, raisins, and prunes) constitute distinct modifications of traditional marketing methods.

The instances in which marketing methods or organization have been revamped under agreements and licenses thus far have not been numerous or extensive. But it would seem that if the marketing provisions of the Adjustment Act are kept in force or should in time be given permanent form, the establishment of an agency within the various commodity groups devoted to the problem of studying marketing problems on a group base would over a period of years result in innovations in market structure and functioning which would be considerable in extent. One's appraisal of the value of such changes will depend upon his analysis of their net effect upon price relationships and of the goals which he considers desirable in this regard. These are issues which will be discussed in the two remaining chapters of this book and, somewhat more broadly, in the general volume which is to follow.

CHAPTER XIV

PRICE OBJECTIVES AND STRATEGY

We turn now to the prime objective toward which the whole market adjustment effort of the AAA has been directed, namely, the attainment of parity prices for producers. The immediate objective of the marketing agreement provisions of the Adjustment Act, like that of the production control program, has ordinarily been stated in terms of unit price.[1] But, as a practical operative matter, neither growers nor administrators are satisfied with the attainment of higher market quotations at the sacrifice of volume of sales to an extent which results in failure to enhance the grower's total net income. In a word, the parties to all such agreements and licenses are operating under the theory of monopoly price, applied to the supply within their administration.[2] The aim of the monopoly is to set the unit cost to buyers not necessarily at the highest possible figure but at the figure which when multiplied by the number of units which can be sold at that price will result in the largest total net return. In several instances, this means not a single price but a differential system of two or more prices which together will exploit all available market demands to the maximum advantage of the seller.[3]

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[1] Under the statute, the standard of pre-war purchasing power parity is set up as the objective of marketing agreements and licenses as well as of the processing tax and benefit payment portions of the act. In the operation of the former, however, less is heard about parity prices and, because of the nature of the business and price relations involved, it would be no easy matter to compute such parity price with any degree of certainty. Thus the general crops chapter in the AAA report for 1934 says: "Improvement of the income of producers is the primary objective sought through marketing agreements and accompanying licenses." *Agricultural Adjustment in 1934,* AAA, p. 202.

[2] It differs from a complete long-lasting monopoly situation, however, in its lack of control over the productive process.

COLLECTIVE PRICE MAKING

The situation brought about by the marketing agreements, supplemented in the past by licenses and in the future by "orders," may be described as "controlled marketing" or as collective price making. It has many points of similarity with the cartel movement in industry. Its general price theory is built upon the more aggressive elements of the co-operative marketing movement as that institution had developed over a considerable period of time prior to the passage of the Agricultural Adjustment Act.

As large federated or centralized co-operatives grew up, they tended to place their emphasis strongly on the desirability of a single co-ordinated control of the distribution of a given commodity so that the total supply of the whole producer group could be administered or manipulated in the market in such a way as to secure the maximum return which seemed feasible in view of the conditions of demand. This meant that supplies should be equalized (1) between the various markets so as to prevent either gluts or scarcities;[4] and (2) over such a range of time as seemed practicable in view of the perishability of the commodity and of the storage, financing, or other costs of holding. The co-operatives borrowed the phrase "collective bargaining" from the organized labor movement to describe their operations. In point of fact, however, this phrase was accurately descriptive of only a very few phases of co-operative marketing activity. Collective bargaining for a price or prices was important in the field of fluid milk marketing and was used also to a minor extent in connection with sugar beets, canning crops, and the like. In the main, however, the practice which the co-operatives sought to perfect was not that of collective bargaining for a price but of collective control of the market movement of the commodity in order that certain price objectives might be reached or at least approached. Though the two procedures differ, the goal is the same.

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[3] Such advantage may be considered either from the short-run point of view in terms of highest price at a given moment or during a single season, or from the point of view of larger returns over a period of years.

Likewise the "seller" in question may be either the producer of the agricultural raw material or the processor who puts it in final form for the consumer or retail trade. Ordinarily maximum net return to the processor will be secured from the somewhat more liberal supplying of the market than that which will redound to the maximum advantage of the grower. This clash between two more or less divergent measures of what is desirable is discussed with reference to celery on p. 331.

[4] It is argued that scarcities, by forcing prices to extreme heights, drive buyers to competing commodities from which they can be won back only with difficulty, if at all.

For the attainment of any such objective, it was felt to be necessary that the whole group act as a unit, and the producer who refused to participate in this centralized strategy of the market was branded as a "scab." He was regarded as seeking to derive immediate personal gain at the expense of the welfare of his group, which might even mean at the expense of his own long-run advantage. Indeed, he might be merely asserting a right to the satisfaction of individual freedom with little or no regard to its effect upon his own fortunes or those of his fellows. The advocates of collective action sought to attain a higher general level of prices, which would be enjoyed by all members of the group, sometimes on a flat or averaged basis and sometimes classified according to the quality or other differential values which the individual's product commanded in the market. But the co-operatives insisted that no individual producer ought to be permitted, while the group was seeking to bring about a certain adjustment between supply and demand, to interfere with the attainment of this objective by the unregulated offering of his product in the market.

Since no scheme of voluntary co-operation in marketing ever succeeds in welding all individual producers into an integrated group, there has been for many years a wistful turning of co-operative thought toward some practicable device for bringing about "compulsory" co-operation. While the term is essentially a contradiction, the idea is obvious; that is, controlled marketing on a comprehensive scale. This might mean co-extensive with the boundaries of the given branch of agricultural production, or sometimes the bounds of a particular area within which its production was carried on. Interested attention was given by American farmers to experiments along this line which have been conducted in other countries, and the inclusion of the licensing provision in the Agricultural Adjustment Act was hailed as at last implementing such an undertaking on the part of American producers. They interpreted this section to mean that when a substantial majority of the shippers of a given commodity (commonly producers of two-thirds to four-fifths of the acreage or tonnage) were ready to agree on a scheme of managed distribution in the interest of collective price making, the non-adhering minority should by license be constrained to abide by and participate in this collective plan.

Beside the move toward "horizontal" integration which sought to embrace all of the producer group within a single organization, there was also a drive toward "vertical" integration under the various clearing-house plans (see pages 133, 187) which sought to get a unity of action between producers and the distributors and processors of their product.[5] Efforts along this line had made comparatively little progress on a co-operative basis, but this phase of the integration movement occupied a commanding place in the scheme of market adjustment by agreement and license.[6]

If we are to understand the economic philosophy which has grown up in connection with these moves toward controlled marketing and collective price making, we must remember that we are dealing not with market prices of staples sold on organized exchanges but with a particular group of agricultural commodities of a perishable or semi-perishable character, none of which fall in the class of consumers' necessities, but all of which range from luxuries to those whose use, though to a considerable extent conventional, is likewise subject to great modification as to time or total quantity. Consumption of fresh milk and (still more) cream may be greatly reduced or even, by some families, entirely displaced by substitution of evaporated, condensed, or dried milk. Distinctive marketing strategies have been evolved for dealing with this situation. Before discussing the relation of the AAA to these marketing methods, we will note certain distinctive features of the market in which horticultural prices are made.

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[5] In varying degrees, the co-operatives of course were processors and distributors of their own product. The clearing-house movement had in part been an attempt to complete control of the commodity by getting a working arrangement with handlers of that part of the product whose producers would not affiliate with the co-operative. In part, however, it had been an attempt to include processors and distributors whose operations came subsequent to those of producers who were co-operatively organized.

[6] Under the recent amendments, it is made possible for the Secretary of Agriculture (with the approval of the President) to resort to "orders" to control all shippers or processors for the effectuation of a collective marketing plan which has the endorsement of at least two-thirds of the producers, even though the handlers themselves have no desire for a collective marketing program. This would give the collective price-making effort some of the outstanding characteristics of a comprehensive producer co-operative enterprise although the marketing functions continued to be performed by private individuals, partnerships, or corporations, along with such co-operatives as were already engaged in the business rather than exclusively through co-operative associations set up by producers.

All vegetables, fruits, and nuts occupy a highly competitive position in the food market. It has become a fixed article of commercial faith among sellers of these commodities that if the market is at any time allowed to become congested so that prices become unsettled, this results in a loss of dealer interest from which it will take weeks to recover, if, in fact, recovery can be effected at all within the course of the marketing season. Equally strong is the belief born of experience that once a low price basis is established as a result of heavy shipment, consumers will "strike" against all attempts to establish higher prices later in the season. The strategy of fruit and vegetable marketing thus lays great stress on keeping key markets from becoming temporarily depressed by excessive receipts and upon restraining shipments at times of accelerated ripening or when markets strike "air pockets" as a result of curtailed demand because of unfavorable weather, holidays, or similar causes.

It is pointed out that the city wholesaler or jobber in the distributive market ordinarily has many rival fruits and vegetables claiming his interest at the same time. He is not deeply concerned in difference in absolute prices, even of a magnitude which measures the difference between prosperity and insolvency to the producer.[7] But he is, in making his forward commitments, concerned to select those lines in which he has assurance that some reasonably definite rate of supply will be known in advance and observed by suppliers.[8] This does not at all imply the bringing about of stringency, but it does imply the pegging of a minimum level at which prices will be supported through the withholding of supplies.

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[7] "In a particular instance when a carload of pears brought $2.77 per box at the New York fruit auction, consumers were paying at the rate of about 25 cents for 6 or 7 pears, or about $5.00 for the box which netted the grower 94 cents for the unpacked fruit. If the retailer had given one more pear for each 25-cent sale, he would have reduced prices to consumers about 13 per cent. If passed on toward the producer, this reduction would have lowered the auction price about 23 per cent, and the producers' returns 69 per cent.

Besides certainty as to quantity, this type of market organization is aimed also at the attainment of certainty as to quality. If early shipments of fruit prove to be immature, if vegetables present a fair exterior but prove to have internal decay, insect damage, or disease, the trades and the consumers promptly turn away from this product, and returns to the growers as a whole suffer out of all proportion to the temporary gain reaped by the shipper of off-quality goods.

Hence, for the regulation of both the rate of movement and the quality of the product, the first concern of any scheme of marketing in the interest of the group as a whole is to secure one centralized control over all commercial movement of the product. Such controls constitute the core of the marketing agreements and licenses discussed in earlier chapters of this book.

If, however, at 94 cents a box a producer was making a gross of $6,000 with a net of $4,000 the above reduction of 13 per cent to consumers would thus have wiped out more than the growers' entire net return." H. E. Erdman, *Some Aspects of the Agricultural Program of the Federal Government,* paper read before Pacific Coast Economic Association, Los Angeles, December 1934.

[8] There has not been sufficient scientific investigation of this and other marketing theories expressed here from the point of view of the marketing agencies to establish their validity, but empirical evidence has firmly planted them in the minds of many "practical" marketing men and government and academic specialists in marketing. It would appear that if efforts to use the present AAA devices for controlled marketing are continued, they will be accompanied by researches which will go far toward proving or disproving them.

TYPES OF SUPPLY CONTROL

From a recapitulation of the distributive procedures which have been discussed in preceding chapters, it appears that these controls fall under five heads, as follows:

1. Exclusion of inferior grades or sizes from shipment.
2. Temporary embargoes on shipment.
3. Restriction of supplies in specified auction markets.
4. Curtailment of shipments during specified periods, generally from week to week.
5. Limitation of the total supply whose shipment or sale will be permitted during the whole marketing season.

The first of these methods of limiting shipments looks very simple at first glance. In its practical applications, however, it develops complications and subtleties of price determination which demand the most careful consideration. It is an old and somewhat overworked maxim among fruit and vegetable producers that a "quality product will always command a good price." As a corollary to this proposition, these interests generally argue that it is the presence of inferior grades and small (and sometimes extra large) sizes of the commodity which drag down the prices of the superior part of the product. It is of course obvious that those classifications of products for which the market has a preference will command a premium price. It is probably also true that, if off-grades are placed on the market in more than ordinary ratio, they will have a tendency to lower prices of these lower grades so rapidly that even the price of qualities that appeal to the more well-to-do and discriminating class of buyers may be to some extent depressed. If the price appeal of the lower grades becomes sufficiently marked, some buyers may shift their demand from standard to sub-standard grades and the price differential between the two may not widen as fast as the price basis of the inferior grades is lowered; the whole price structure may be lowered.

It is going too far, however, to assume that the most profitable way of meeting this situation is to place supply limitations exclusively on the low grades. It must be remembered that even within a single commodity there may be practically non-competitive classes of demand. If there exists a larger total supply than can be sold at prices which will return marketing and harvesting charges (or whatever formula of "necessary price" the producers may set up), it is quite probable that for commodities where the second or third grade is palatable and wholesome the maximum returns will be secured by making some though not necessarily proportional withholding of the product from all grades.

For simplicity, let us assume a commodity which falls into three grades, A, B, and C, of which 30, 40, and 30 per cent respectively will make the specified grades. We assume further that producers estimate that approximately one-third of the total product cannot be shipped at a remunerative price. What might appear to be the obvious method of market adjustment in this situation would be to withhold the C-grade product entirely. Let us say, for the sake of convenient labels, that A-grade fruit is bought by the rich, B-grade by those in moderate circumstances, and C-grade by the poor. This type of limitation would mean that the distributive machinery would be asked to dispose of a larger volume among the rich and well-to-do than they are accustomed to take, whereas no comparatively low-priced product would be available to the poor, whose purchasing power is so limited that they must buy on a low-price basis or not at all.

It seems impossible to escape the conclusion that in this situation the price of A-grade fruit would have to be lowered to a point where some of it would be absorbed by the more affluent of the B-grade buyers and that of B-grade fruit lowered to a point where some of it would be absorbed by C-grade buyers. If so, there might be doubt whether the total returns on all fruit shipped would be as great as those which could be secured by withholding part of both the A-grade and B-grade fruit, and shipping as much of the C-grade fruit as could be disposed of without bringing its price too near the level which would merely pay out-of-pocket costs to the producer. Such a policy tends to retain the percentage of all classes of consumers and possibly even extend it somewhat among buyers of moderate means. Furthermore, it builds good-will by the offering of food "bargains" rather than limiting market appeal to the more favorably situated buyers and possibly engendering resentment even among them.

Of course this is a type of question which cannot be answered in advance by any set formula. Our oversimplified example, however, shows the limitations of a curtailment program based exclusively on withholding the less attractive grades of the product. On the other hand one prime object of marketing agreements is to keep off the market all shipments which would not pay handling costs.[9] This naturally leads to the exclusion chiefly of low-quality product.

Besides the question of what price results will follow from putting the limitation in shipments exclusively on the low grades, there is the question of what effect this will have upon the fortunes of individual producers and on the subsequent organization of the industry. Even where this type of limitation has been used under marketing agreements, it has (see pages 121, 126) been accompanied by provision that if a given grower's product falls exclusively in the off-grades, such exceptions will be made as will permit him to continue shipping. The administration of any such plan with its exemptions raises many intricate questions as to whether strict enforcement of withholding by grade tends to discriminate against a grower who has been the victim of weather or other growing hazard which is common to all members of the producer group; or whether the inferiority of his product is due to lack of funds with which to provide better fertilization, spraying, or other cultural practices; or whether it is due simply to carelessness or indifference on the grower's part which tends to be encouraged if he is granted exemptions, whereas strict adherence to the rule would serve a constructive purpose in the industry.

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[9] A study made by the General Crops Section of the AAA covering 27,000 boxes of Florida grapefruit sold on the Chicago auction market during the 1934-35 season showed 31 per cent of them selling for less than the cash outlay for harvesting and marketing.

Still more delicate is the question if inferiority runs along geographical lines, so that strict enforcement of a rule for limitation by grade would tend to encourage the gradual migration of the industry toward the most favorable growing areas, whereas the opposite course would tend to perpetuate the use of lands and (in the case of orchard crops) trees which can produce only an inferior product. Any collective marketing plan which discriminates against such inferior product will tend to destroy capital values and raise the whole question of the vested interest of their owners.

With the period in which market adjustment plans have been in operation limited in most cases to two seasons and in many to only one, there is no large body of experience on which to generalize as to the soundness of the decisions reached when such issues were involved. In many cases, even where such problems have been perceived, they have simply been discussed as matters which would probably have to be dealt with in the future and have not resulted in decisions which have been incorporated in agreements, licenses, or rulings. It would appear that when such questions have arisen, they have generally been met on some sort of opportunistic basis, with the control committee adopting some "rule of thumb" apparently not too hard on any particular group. It seems hard to avoid the conclusion that in local supervisory bodies chosen on such representative principles as are employed, the decision is likely to be essentially political rather than economic in character. It remains to be seen how far the guidance and suasion of government representatives would result in economically sounder action than would be taken if the operations of growers were conducted on an individual basis rather than through these devices of controlled marketing.

The second and probably the simplest method by which marketing agreements employ control of shipments to attain stated price objectives is through temporary embargoes on shipment. Such a "shipping holiday" is a protective device used to prevent temporary slumps of demand or spurts of supply from congesting the market and disorganizing a general scheme of prices worked out for the whole seasonal movement on the basis of the supply and demand adjustment of the season as a whole. The season's pattern of prices may contemplate a low level on early shipments and a consistently advancing price from then until the close of the season; a curve of prices from a high level during the scarce period of early shipment to a lower level during the abundance of mid-season; and a return to higher prices at the close of the season as supplies again become scarce, or possibly a substantially uniform price from beginning to end. Whatever the pattern, it is consistently held by shippers of perishables on the basis of their experience that a temporarily glutted market means a disporportionate slashing of prices from which it is a slow and painful, if not impossible, undertaking to get back to the level which is consistent with the supply and demand situation for the whole season. They argue that a comparatively small excess of shipments so disrupts prices as to involve losses far beyond the gross value of the goods marketed during the glut period.

The mere announcement that no further supplies will be forthcoming until stocks in dealers' hands or on track are reduced to normal proportions immediately gives the trade confidence in their efforts to maintain approximately the existing scale of prices. The use of the shipping holiday under the group marketing device provided in the Agricultural Adjustment Act distributes this hazard over all producers whose crops are coming to market on the particular day or days when the embargo is ordered. Use of the method raises the question whether, if such collective schemes are continued, it will be thought desirable to mutualize this risk still further by providing some form of settlement for a product which goes to waste during the shipping holiday. The equitable procedure would depend upon whether the surplus is of a temporary character or whether it accumulates over a period; also, whether it is local or general.

Our third type of supply control rests on a different basis than the two we have just discussed; it contemplates supply control geographically, that is, among particular markets. In general, the distribution controls authorized in the marketing agreements relate to the total flow to the market and do not involve taking out of the hands of individual distributive agencies the task of equalizing supplies between markets on the basis of their individual exploratory and bargaining skill.[10] In a few cases, however, the nature of the distributive process, particularly as influenced by transportation conditions, presents a recurring possibility that receipts will arrive at certain markets at a very irregular rate and, in the absence of any control, will be forced to immediate sale, with the same sort of demoralization of prices in the particular markets that we noted in the preceding section.

In the present case we are thinking not of highly perishable products such as strawberries or watermelons, but of semi-perishable products such as apples, pears, or citrus fruits. These products are to a considerable extent sold at auction in the large central markets and, according to a strongly held theory of shippers, if heavy shipments are placed on the market immediately on receipt, such a market will decline sharply without a proportionate recovery when, a few days later, shipments are lighter. If, on the other hand, the heavy receipts of one day are equalized by the smaller receipts of the two or three remaining days of an auction week, a much more even trend of prices may be maintained. This situation is particularly marked in the case of shipments of citrus fruit from Florida to the four principal seaboard markets—Boston, New York,

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[10] This emphasizes the fact that marketing agreements and licenses or orders complement rather than supersede co-operative effort. The co-operatives' effort is directed primarily to improving product and marketing methods, including distribution among the various market outlets with virtually no control over total supply. AAA market adjustment efforts have had comparatively little influence on the market process as such but have added a hitherto unknown power to influence total supply during a period or even finally.

Philadelphia, and Baltimore. Since citrus fruit moves by water more than by rail, and since boat shipments move in larger units and more irregularly than rail shipments, the coincidence of the arrival of one or two boatloads of fruit with heavy or even normal railroad shipments is likely seriously to derange the scale of prices for the whole Northeast section. Prices at private sale tend to be strongly influenced by auction quotations and many shippers believe that prices at minor interior markets are inclined to follow closely those at the big transaction centers regardless of the volume of local receipts. Hence they are concerned to see that prices at these price-basing points be supported through controlled shipments.

Proration between auction markets, like most of the devices used under marketing agreements, presents difficulties as well as constructive possibilities. It may result in limitation of the marketing activity of a given shipper and his dependent producers simply because of the fact that his market connections run to auction markets, whereas another shipper and his producer group are not subjected to this restraint in the same market at the same time because of the fact that they are distributing through non-auction points. For the purposes of our discussion, however, the point is sufficiently clear that this type of geographic limitation is being considered and experimented with under collective marketing plans in the belief that local congestion of supplies at a given transaction point tends to have a depressing effect upon prices in general, which can be avoided, or at least mitigated, by control which results in auction receipts being offered in such markets at a more uniform rate. Among parties to market adjustment plans, opinion differs quite sharply as to the proper extent to which and methods by which this device should be employed. Experience in its use has been very limited and little if any scientific research applied to the problem.

The fourth type of supply control, and one which is very broadly typical of marketing agreement procedures, is the "period prorate." It consists in establishing a quota of total shipments that may be made by the collective marketing group during a given period of time. Since such arrangements apply to perishable products, it is desirable to make these adjustments at as short intervals as is feasible, which, in practice, ordinarily means weekly. Where the period prorate is employed, the control committee must adopt some more or less fixed philosophy as to price and then employ its control over current shipments as a means of approximating that price objective as closely as the market situation permits. It might adopt a rather fixed price policy at the beginning of the season and adhere to this, regardless of the severity of the withholding operations to which it leads. In practice, the committee is more likely to follow an opportunistic policy, observing the course of prices during the early weeks of the shipping season before supplies become abundant and, with this as a basis, decide on an approximate minimum price level which it will support by curtailing shipments by period prorates subject to adjustments necessitated by developments in competing areas.

An interesting case of this type of controlled marketing was presented under the Florida celery agreement during the past season. Conditions were relatively favorable for a good level of prices owing to the shortage of celery in competing districts and also to the damage by frost which reduced supplies of other winter vegetables more or less directly competitive with celery. In this situation prices during the early shipping weeks were on a more favorable basis than those received for some years previously. As the heavy shipping season approached, the control committee invoked the seasonal prorate procedure provided in the marketing agreement. In the first week under control it was decided, after estimates were canvassed, to permit the shipment of all the available supply. In the three weeks which followed, the proration was set successively at 85 per cent, 70 per cent, and 80 per cent of the estimated available volume.

Experience indicated that the estimates of available supply were persistently inflated and that even when cut to an 80 or even a 70 per cent proration basis, practically all the celery which was marketable was able to move. When it came to the peak of the season, the committee was presented with an estimate of 818 cars as available volume and a recommendation on the part of the shippers that 600 cars could be sold [11] without depressing prices from the then rather satisfactory level. This was subsequently reduced to a motion for a prorate on the basis of 575 cars, which was countered by a recommendation from a grower member of the committee that shipments be limited to 500 cars in the hope that the price could be somewhat advanced. A compromise was effected on the basis of 535 cars—a 64 per cent prorate. During this week the actual shipments amounted to only 514 cars. Celery on track in the markets held at the identical figure of the week before, which was not regarded as excessive, and the price remained substantially steady, although a few skillful shippers succeeded in advancing it by 10 cents a crate at the close of the week.[12]

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[11] 523 cars had been the peak week's shipments during previous weeks.

[12] The U. S. Department of Agriculture average quotation advanced 5 cents; that is, to $2.75 per crate as compared with $3.25 at the beginning of the

The effort made by producers to keep within their prorated amounts resulted in a closer "stripping" of the celery stalks, which in turn produced a superior product and did not require the discarding of practically any celery of a desirable quality for consumption. In some cases, individual producers had to leave in the field fairly sizable amounts of celery of good merchantable quality, but the total for the region as a whole was a very small percentage. When the control committee came to review this experience at the close of the week, the general opinion was that the maintenance of price with this very slight sacrifice of edible celery constituted a satisfactory result and that in the following week the purpose should be to maintain that level of prices. This, it was decided, could be done by a prorate of 75 per cent and was followed by 80, 80, and 85 per cent respectively in the three succeeding weeks. As a matter of fact, however, these prorations were hardly more than nominal, since much celery was listed which had rather poor chances of being actually available for shipment. Shipments ranged from 80 to 88 per cent of the permitted amount and prices advanced to $3.50 per crate during the last week under proration.[13]

Under this sort of procedure, the control committee as the representative body of the industry has an opportunity to analyze the season's demand prospects and possibilities

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month and $3.80 three weeks earlier. "Receivers seemed to realize that the celery industry was determined to control the movement and the market made a slight gain. In perspective this week seems to have been a turning point, from this time on the sales were easier to make and prices increased practically throughout the season." *Report of the Chairman and Secretary to the Control Committee for the Florida Celery Industry on the 1934-35 Season,* June 29, 1935.

[13] For the three weeks after the termination of control, prices were $3.60, $3.90, and $4.10 per crate respectively. Shipments dropped to about 350 cars in each of the first two weeks and below 200 cars in the last week.

in advance and to adopt such a policy as seems best to serve the interests of the industry as a whole. Thereafter, it must adopt each week a specific procedure which, in its judgment, will accomplish the policy originally determined upon or some modification of it in the light of subsequent developments. From week to week, the committee must face the following question from the standpoint of all the interests which it represents: will larger shipments at a lower price or smaller shipments at a higher price best serve the fundamental interest of its group—long-time as well as short-time? It must work out such a procedure as seems to it most likely to accomplish the desired objective, reviewing each week the successes and failures of that procedure and the wisdom or unwisdom of that policy as results actually worked themselves out during the preceding week.

Our fifth type of supply control is applied to the less perishable commodities and takes on quite a different character. Instead of setting up a general price objective and then interposing certain partial or complete stoppages in the market flow for the purpose of sustaining prices at this level during particular exigencies of the market, the control committee or other administrative agency sets the total supply for the season in advance. That is, it decides in advance that the pack of peaches or other canning crops or the volume of prunes, raisins, or walnuts to be placed on the market shall be so many cases or tons, having estimated that the price at which demand will meet with this supply will be satisfactory or at least as nearly satisfactory as it is possible to obtain.

Within this general type of supply control, three major varieties are to be noted. In the case of the first cling peach agreement, both quantity and price were set in advance. In the 1934 agreement, however, this arrangement was simplified by limiting the total tonnage of peaches that might be canned and distributing this quota to individual growers on a prorated basis. Canners then were free to make purchases from any grower on a competitive basis, the theory being that the desire of each canner to get as large a fraction of the total permitted pack as possible would result in each producer's getting the full competitive value of his product. In determining the total tonnage to be canned, the industry through its control committee has to decide whether maximum permanent benefit is to be derived from a relatively small output at a high price or a larger use of the available crop at a lower price per unit.

There is little alternative use for such part of the crop as is not canned, and a considerable volume of No. 1 peaches, as well as all of inferior grade, was allowed to go to waste in both years that an agreement was in force. For that matter, a considerable part of the crop had also gone unharvested in 1927, 1928, and 1932 (when there was no control program), and in 1930 (nearly half the pack) and 1931 when proration was operated on a voluntary basis in the absence of any specific legal provision. In those years the processors, even without formal agreement, protected themselves by ceasing operations at what they considered a safe size of pack, whereas the pressure of a volume of raw fruit sufficient to pack practically twice as many cases as were put up accentuated the competition between producers seeking to get some part of the restricted outlet. Under the first AAA peach agreement it was sought to protect both producers and canners by restricting the tonnage of raw peaches as well as the pack of canned product, with a mutual adjustment of the two prices. In the second agreement, volume limitations were placed on both harvesting and pack but competition between canners was relied upon as a means both of directing the packing business into the hands of the most efficient operators and of securing for producers as high a price as conditions in the consuming market for the product would permit.

Under the license for canners of asparagus, the size of the season's total pack was determined in advance, but no allocation was made to either canners or growers. Instead, the opening date of the canning season was established and canners bought asparagus freely on a competitive basis from growers until the quota was filled. Thereafter, no further canning operations were permitted and the cutting season ended. Under this arrangement no product was caused to go to waste, but the productive plant, so to speak, was shut down at a date earlier than that which would have been necessitated by technical considerations or than would have been done by growers acting without group solidarity. We have noted (page 136) that under the first agreement the manner in which the quota and the opening date for canning were set tended to withdraw some product that would otherwise have gone to the fresh asparagus market, but that the second agreement sought to avoid this result by a special limitation of the amount of asparagus to be canned during the first three weeks of the season.

When we turn to the dried fruit industry, we see a somewhat more flexible arrangement. Under the raisin agreement all fruit of standard grade may be delivered. A schedule of minimum prices is established and volume of fruit allocated for sale in such quantity as it is thought the trade can absorb without impairing these prices. The remainder of the standard product and all sub-standard grades are put in a "reserve percentage." If the market shows ability to take more than the original allotted quota at the minimum prices during the regular market season, this reserve tonnage can be fed into the market at the discretion of the control committee, but only at prices set on "appraisal" of its value in lower grade uses. The prune agreement does not fix a minimum price but puts all sub-standard grades in a pool for diversion to by-product uses or export dumping. They may not be intermingled with the domestic supply of merchantable stock. The price philosophy of these agreements places chief emphasis upon the attaining of the most satisfactory returns for the total product by maintaining the price of all, or a large proportion, of the product of superior quality by diverting all off-quality fruit and possibly some of standard grade into largely non-competitive low-price outlets. This general policy of segregated markets and differential prices will be further discussed later.

The walnut agreement is essentially similar to the dried fruit agreements in its temporary withholding of a "reserve tonnage" from the market. Its chief difference is that it provides that any part of this reserve tonnage may at the discretion of the control committee be carried over into the subsequent season, if prospects of a short crop or expanding demand cause such a course to give promise of profitable outcome.

It will be observed that these five types of supply control represent three plans of action ranging from (1) those which represent a mere manipulation of the supply in point of time or place with no actual withholding; through (2) those which cause the diversion of some part of the product from what we think of as its highest grade use to a subordinate or by-product use; to (3) those which through non-utilization of the product result in its passive destruction, or in the case of canning crop asparagus, its non-production. We should also call to mind one other agreement, namely, that for rice, in which the marketing agreement was made the agency for acreage limitation and the curtailment in advance of production rather than the non-utilization of the crop after it was produced. This agreement has now been superseded by a processing tax and benefit payment type of production control, but proposals have been forthcoming that production control devices be in future incorporated into some of the existing marketing agreements in order that growers shall be protected against the danger of investing their labor and money in the production of a crop for which events prove there is no remunerative demand. We shall deal with this issue in our closing chapter.

THE TWO-PRICE SYSTEM

The phase of market adjustment undertakings which reflects most closely the philosophy of other parts of the act and of various measures, notably the McNary-Haugen bills, which had been proposed before the passage of this measure, is to be found in its use of the two-price system.[14] Under this policy certain agreements segregate the product into two general classes with more or less independent price bases. The upper class constitutes the most remunerative market and supplies will be fed into this market under careful control, so that it may be exploited to the full under the general principle of monopoly price to which we referred in the beginning of this chapter. Instead of being allowed to go to waste, however, the remainder of the product is diverted to a lower price market, principally domestic by-product uses or foreign dumping. It was this differentiation between a strongly supported domestic price and a residual export price that constituted the core of the export debenture and McNary-Haugen proposals and which was to the fore in Mr. Peek's activities during the drafting of the present law and during the early days of its administration.

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[14] Sometimes referred to as discriminative pricing. See A. C. Pigou, *Economics of Welfare,* Chap. XIV.

This type of price policy has been exemplified under several marketing agreements. In the case of the North Pacific wheat export agreement, a virtual subsidy was paid on exports as a means of supporting domestic prices. In the rice agreements, a marketing fund was raised by assessment upon all millers for the purpose of defraying extra charges or reimbursing particular dealers for price concessions made on part of the rice diverted to "non-routine" markets for the sake of supporting basic prices in the established markets.

Another type of two-price system is illustrated by peanuts and walnuts. When the output of walnuts in this country was only sufficient to meet the trade demand for walnuts in the shell, this semi-luxury demand, limited largely to holiday uses, yielded a fairly high level of prices. With the increase of supplies, grading methods were improved and all cull walnuts were cracked and came to market as walnut meats (either whole or broken), where they found a quite different and lower price demand among bakers, confectioners, and ice-cream manufacturers. It has been a constant policy of group marketing in this field to retain the differentially higher price for walnuts in the shell, and the marketing agreement furnished the most effective means yet devised for preventing such an unrestricted flow of supplies into this market as to blur or destroy the price differentiation between it and the market for non-table nuts. In the case of peanuts, the line of demarcation falls between shelled nuts, used largely by confectioners, and the nuts crushed for oil. It was proposed that the agreement be employed to maintain a differential between the two sets of prices in order that the demand for nuts for table and confectionery use might be kept dissociated from the residual demand for nuts in the industrial market. Although rejected then, the plan was later carried out under the processing tax.

Much the same differentiation has been made in the case of olives. This commodity in the canned form yields a comparatively remunerative price to the grower, and it is probably only for this market that olives could be profitably produced in this country. However, if the demand is to be met in years of normal yield, there will be some years of flush production when the supply is excessive. Likewise, it is probable that in the enthusiasm of the early days plantings of olive trees went somewhat beyond the point that would be justified by market demand for the canned product. Hence any scheme of controlled marketing contemplates the support of prices of olives used for canning by diverting to the crushers not only culls but all olives in excess of the amount that could be sold in canned form at the desired scale of prices. The oil market, in contrast to the narrowness and inelasticity of the canned olive market, is much larger and more elastic. A tonnage of olives which would completely demoralize the price of canned olives has a scarcely discernible effect on the price of olive oil. This difference in elasticity is rather generally characteristic of the markets for commodities handled under a two-price system.

Although lemons were not included under the California citrus agreement, they have been handled by the large co-operative association of growers under a modified type of two-price plan. There was no secondary market for the fruit at the time that supplies increased to the point where they were felt to have an unduly depressing effect on the prices of fresh fruits. The co-operative, however, pioneered the way in the development of by-product plants, which created a secondary market. The lemon situation differs from the ones which we have been considering in that the market for by-products is relatively inelastic and the yield on lemons processed for by-products is very low as compared with those going to the fresh fruit market—about one to ten.

Dairy prices are also sometimes cited as an illustration of discriminative pricing under the monopoly powers of the Agricultural Adjustment Act.[15] It is evident that the strategy of the AAA undertakings in this field and of the co-operative ventures which antedated them sharply differentiate the fresh product and the processed product under a two-price system. It differs somewhat, however, from the illustrations which we have been discussing. Dairying is not a single industry which produces primarily for the high-priced (fluid) market with a more or less incidental surplus processed for by-product use. Butter and cheese manufacturing are co-ordinate branches of the industry along with the fluid milk business. They have some separate producing areas from which only occasional supplies of fresh milk or cream are diverted to more or less distant fluid markets. Likewise, evaporated milk production is fairly well segregated from both fluid milk and butter and cheese production. In some regions, however, the different branches of the industry overlap and create a wholly conflicting situation.

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[15] John Cassels, "The Fluid Milk Program of the Agricultural Adjustment Administration," *Journal of Political Economy*, August 1935.

Fluid milk plans have in general sought to maintain a superior price for the fresh commodity and to support this by allowing such part of the milk of producers as cannot be sold at this price to drop back into butter and cheese use. While no agreements have been developed in the butter or cheese industries, co-operative control has sought to maintain a differential above the price paid for milk at condenseries. Thus such discriminative relationships as were attempted among several branches of the industry were of a very complicated and not very successful sort. The branches of the industry have neither been integrated under a single control agency nor co-ordinated by series of mutually related agreements designed to support a comprehensive scheme of differential prices. There were local agreements and licenses covering various fluid milk markets and national agreements covering evaporated and dry skim milk.[16] But the middle area of cheese and butter prices never succeeded in finding its place in this scheme of control. It seems probable that the breakdown of many of the fluid milk price efforts was due to an attempt to maintain an artificial differentiation of their prices from the rest of an industry of which economic forces inevitably make them an integral part.

FIXED PRICES AND OPEN PRICES

Our discussion of price-making theories and procedures under marketing agreements has been limited thus far primarily to devices to bring market supply under control as the means of attaining price objectives. In the main, these objectives have been stated in somewhat general terms and have been left in a rather flexible position subject to revision at short intervals in the light of the success achieved or difficulties encountered in connection with control operations. To some extent, however, participants in marketing agreements have turned to the more rigid proposals for fixing price schedules in the belief that the possession of control of the market movement will enable them to enforce such price schedules upon the consuming public. Price fixing seems to be the device to which the economically uninitiated turn most quickly and generally when any movement for price betterment is launched.

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[16] It is dry or powdered milk which probably is to be regarded as the residual element or only true by-product in this elaborate price structure. Fluid milk, cream, butter, cheese, and evaporated milk have such a closely interlocked relationship, geographically and functionally, as to seem to constitute a single scheme of prices constantly approaching equilibrium through a scheme of differentials based on quality and delivered costs.

In response to the urgings of local interests, fixed prices were, as we have seen, included in a number of the early agreements. Generally speaking, however, the Administration consistently set its face against this procedure, yielding to advocates of this method only where there seemed to be special reasons justifying such a precedure. With reference to general crops, such special circumstances were not found to exist in connection with any perishable vegetables or fruit except Northwest tree fruits. With some dried fruits and nuts, there had been a custom of the trade to quote prices which would be guaranteed against decline for some weeks or months rather than to have a progressive bargaining market. For this and other reasons it seemed expedient to announce a specific scale of prices under agreements in this group at the opening of the season and to maintain it for at least a substantial part of the marketing season. Fixed prices were also named for apples under the Northwest deciduous tree fruit agreement, but the special reason there seems much less conclusive and the results far from successful. Even in the case of canned cling peaches, the price fixing of the first year gave way in the subsequent agreement to a method of setting the amount of the total pack and leaving all canners to compete for their share of producers' supplies.

Whenever the fixing of prices at any point in the marketing process is undertaken, the question immediately arises as to whether prices at other stages of the process will be or can be brought into suitable adjustment to those which are fixed. Generally speaking, the AAA sought to limit any price fixing to the point at which producers dispose of their product to processors and distributors. The area within which marketing agreements have been undertaken, however, is precisely that part of the marketing system in which co-operatives are particularly active. Since the essential character of the co-operative consists in its performance of processing or distributive functions, after the product leaves the hands of its members, there is no bargain or settlement at the point where producers' prices are established in private trade.

A similar situation obtains where producers do their own distributing, as in the case of local milk groups or where processors or handlers grow their own product. It was sometimes urged that this was a reason for naming such resale as well as producer prices in agreements and licenses. This, however, amounts to establishing dealers or processors' margins for all regular commercial operators in these fields. Aside from the fact that this was not in the judgment of many interpreters of the act the intention of Congress, any attempt to carry through such a procedure involves a much fuller access to books and records of handlers than would be necessary if producers' prices alone are stipulated. The attempt to make such comprehensive checks of the business operations of handlers not only magnifies greatly the administrative task of the Adjustment Administration but develops so much friction as to threaten the further participation of processors and distributors in any market adjustment program. Resale prices were therefore entirely eliminated and all fixed prices dropped from all plans except those for milk. This result was incorporated in the amendments of August 24, 1935.

During the course of marketing agreement negotiations, the proposal has been forthcoming at various times that instead of naming prices which were to be binding on all members, it would simply be required that each shipper or processor post with the control committee, for the information of all other signatories or licensees, a schedule of prices which he would pay until further notice. This "open-price posting" system has actually been incorporated in only three agreements which were made effective, but it is a device which would seem to have wider fields of future usefulness. At times, it might be used to preserve the competitive independence of the shipper or processor and to maintain the ability of the market to make flexible adjustment to shipping conditions which may be too complicated and too swift moving to be judged adequately by a control committee. At the same time, if properly enforced,[17] it would protect the producer from the danger of making his decision as to the price at which he will sell his goods on a basis of individual bargaining without knowledge of conditions obtaining for the group

[17] Administratively, it is practicable only if the shipping area is compact and the number of handlers small, so that the task of checking compliance will be kept down to manageable proportions.

as a whole. Obviously, the field of application for an open-price posting system is limited to situations in which the product is sold f. o. b. the local shipping point or bought by processors at the farm or a local processing plant.

SOPHISTICATED PRICE-MAKING SYSTEMS

Thus far, we have been discussing comparatively simple price-making mechanisms in which transactions are carried on between sellers and buyers in the effort to dispose of an existing supply on as favorable terms as possible. It modifies the traditional "higgling of the market" only to the extent that group control is imposed upon the individual's decision as to the quality of his product which he will part with at a given level of price. There remain to be noted two cases in which this rather simple supply and demand mechanism has given place to more indirect and elaborate price-making mechanisms which institutionalize the process to a much greater degree and give it a character which in Chapter III we referred to as "economically sophisticated."[18] The outstanding case concerns fluid milk marketing in metropolitan markets.

Growth of urban consuming centers, with accompanying displacement of farmers from a considerable suburban zone, along with technical developments such as pasteurization and highly efficient refrigerated transportation, pushed the producer and the consumer of milk further and further apart. This process was accompanied by the growth of large distributing organizations, some of them operating over a wide geographical area, the counter-organization of producers' co-operative associations, and the expansion of regulatory functions of municipal authorities—continuously with reference to standards of sanitation and even on price questions in emergencies when conflict between producers and distributors interfered or threatened to interfere with milk supply. Furthermore, peculiar elements of mass psychology had come into the situation. Changing ideas as to diet offered producers and distributors of milk an opportunity to expand their market, which they were prompt and aggressive in taking advantage of. They found, however, that to establish liberal milk consumption firmly in the habits of consumers, it was important that supplies should be always and conveniently accessible and that price changes should occur rather infrequently. These results must be accomplished in the face of the fact that consumers' demand is affected sharply and sometimes very unexpectedly by weather changes, the occurrence of holidays, vacation shifts of population, and the like.

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[18] Somewhat analogous developments have taken place in other agricultural commodities, notably the organized commodity markets with their future trading in terms of selected months, short selling, and the like.

Under such circumstances, it is necessary that a very broad and a very long view of the problem of purveying fluid milk to city users be taken. This seems to necessitate the bringing of a strong majority of interests on both the producer and distributor side into a single price-making mechanism. If collective bargains are to hold, they must reflect quite accurately the actual conditions on both the supply and the demand side. They must provide a remunerative price for the necessary number of dairymen and a scale of operations in proportion to the amount of consumption that will come forward or can by advertising or sales promotion be drawn forth at a given level of standardized prices readjusted rather infrequently.

We noted in Chapter X that this has resulted in a rather conventionalized scheme of class prices based on anywhere from two to five types of use, differently defined in different markets, and that in many markets the payments made by the distributor to the producer are readjusted by a system of equalization payments designed to bring his individual situation to or toward the norm of the distributor group.

On the producer side, we noted that under the more elaborate systems, the group bargaining to which the producer was a party involves negotiating both a price basis and one or more differentials and the terms upon which his product will be classified in the several payment categories. The point which we wish to make is that the price-making method here has, under the exigencies of market development, departed far from any "natural" competitive relationship between the supply of a given parcel of milk on a particular farm and the individual housewives, restaurateurs, or others who become the ultimate buyers. It will be noted that prices have been given a conventionalized character, thoroughly artificial in terms of any direct bargaining between individual producers and individual consumers such as would simply "clear the market" from day to day. This conventionalizing and sophisticating of prices is, however, distinctly purposive and designed—however ineptly as yet—to effectuate a permanent supply of milk of desirable quality and to establish fixed and liberal habits of consumption of a high quality product on the part of consumers.

What constitutes a "right price" under such circumstances is a question of the utmost difficulty and one which no set formula can answer. Scientific methods of analysis should be relied upon to guide those who undertake to set such prices and readjust them from time to time. But the conclusions to which such analytical methods point in a given situation must be checked against numerous salient facts—psychological as well as economic—and the price finally negotiated must be justified by pragmatic tests rather than by any rigid or mechanical logic. The really significant question is whether such scales of prices can in the long run establish a stabilized, because remunerative, supply of the kind of milk the market wants if worked out under purely co-operative auspices with a considerable fringe of independents conforming to or diverging from these prices in such ways as they see fit, or whether all parties should be constrained to comply with the price system arrived at by negotiation of the majority, supplemented by governmental guidance. No body of experience is yet available from which to deduce a convincing answer to this question. It would seem likely, however, that considerable further light will be shed on the question if the present field of experimentation is further cultivated during the coming years.

While no other commodity has furnished an illustration of such a process at all comparable to that of fluid milk, germs of the same development are discernible in other marketing agreements. We have noted in several instances (see pages 121, 126, 155) that where proration or withholding operations are provided, the control committee is empowered to make special exemptions in the case of producers whose product falls entirely or more than proportionately in certain excluded classes. In actual operation, likewise, it has been found that peculiar weather conditions may cause the product of certain areas to come to a marketable stage just at the time when proration is particularly severe. Or the peculiar soil conditions or cultural practices of an individual or group of growers may cause the incidence of control to fall upon them with unequal force. In such cases the proposal has been forthcoming that this risk should be equalized over the whole group in somewhat the manner that conditions are equalized under the elaborate milk price systems.

In so far as this might be done, it would constitute a further departure from the price structure which would grow up in the absence of controlled marketing. Once such controls are undertaken, it seems practically certain that individual growers will be alert to demand protective devices against the possible unequal incidence of control devices. Since exemption from the plan tends to defeat its own purpose, the natural tendency would be to distribute this hazard over the whole group. Such an effort, besides introducing complications, presents two possibilities: (1) that it will have a wholesome and stabilizing effect on the industry by protecting the individual against hazards which are disproportionate to the size of his economic enterprise; or (2) that by socializing hazards which are due to injudicious selection of land or inferior cultural methods, it may tend to retard the wholesome adjustment of the industry rather than to advance it. In any event, it raises the same sort of question which we have met in other connections, namely, whether the administration of such a device can be made essentially objective and scientific, or whether it will inevitably take on a political character and action will be determined in response to group pressure rather than economic merit.

CHAPTER XV

RESULTS AND FUTURE USEFULNESS OF MARKET ADJUSTMENT DEVICES

Any attempt to appraise the results which farmers have attained under the marketing agreement and licensing provisions of the Agricultural Adjustment Act is beset with extreme difficulties. It is an even harder task than that for those commodities which come under the production control and benefit payment program. Cotton, wheat, and livestock are dealt in largely on organized exchange markets where actual prices follow quotations closely and grades are highly standardized. It is possible to compute with some degree of plausibility the amount of price advance attributable to the adjustment program, to impute the incidence of the tax, and to estimate with fair accuracy the net enhancement of income which producers of these staples have enjoyed. When it comes to marketing agreements, we are dealing in the main with specialty products for which price data are much more defective and where market conditions and price behavior are so complicated and uncertain as to make the task of estimating pecuniary results extremely hazardous.[1]

This chapter therefore will be couched in terms of qualitative analysis rather than statistical computation. The purpose will be to shed light on the question whether marketing agreements and licenses (now orders) have introduced into our market institutions a new mechanism or agency of distinctive usefulness to farmers either temporarily or permanently. In pursuing this inquiry, we shall not attempt to answer the broader question whether any power to enhance their incomes which these devices might confer upon farmers is economically sound, socially desirable, or politically safe. This larger question is deferred to a subsequent volume in this series. We shall, however, seek to show how market controls under the AAA have during the short run been operating, whether to the hurt or help of the agricultural groups involved, and how they seem likely to operate in the long run. Only after getting a clear picture of the actual process of their operation shall we be in a position to appraise their potentialities either for rational economic guidance of the affairs of particular agricultural groups or for action which might be prejudicial to other interests.

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[1] The Marketing Research Division of the U. S. Bureau of Agricultural Economics has been called upon to attempt the task for the benefit of the Adjustment Administration. No doubt results will eventually be obtained which will be of value, but this will be more by way of guiding subsequent action than of establishing the precise magnitude of the gains.

LIMITED GAINS TO MILK PRODUCERS

Fluid milk marketing agreements and licenses made up the largest field of activity under market adjustment plans and all in all have probably marked the hardest fighting for aggressive enhancement of prices. To a limited extent, milk and cream prices have been advanced under these agreements and licenses and to a greater extent returns have been maintained at a time when strong forces were pulling to lower them. Since fluid milk producers were already organized under numerous and aggressive cooperative marketing agencies for the sake of obtaining these same objectives, it is certain that even in the absence of an agricultural adjustment act there would have been strong group effort which would doubtless have had some results in this direction. One would be bold indeed to venture any estimate as to how much less effective, if at all, these co-operative bargaining efforts would have been than those under the Adjustment Administration.

Dr. Black presents a table[2] of quoted prices in 23 licensed markets which shows that, during the period from May 1933 to September 1934, the advance in the former exceeded that in the latter by 36 cents per hundredweight. He points out, however, that there is no way of knowing whether prices actually paid conform more closely to published quotations after the licenses than before. It is, however, generally assumed that such was the case.[3]

All that anyone can in honesty say is that the "centralized strength of government" back of these agreements and probably to a limited extent legal enforcement efforts, by checking certain competitive practices of those outside the established collective bargaining organizations, exerted an appreciable influence toward price maintenance or advance. There were of course other AAA measures, such as butter purchases and cattle purchases, which tended to strengthen fluid milk prices, but these lie outside our present inquiry. We turn, therefore, to the qualitative question whether under the law and procedures as developed the fluid milk industry has evolved marketing institutions which in the future promise to insure it a more prosperous and stable economic position.[4]

Co-operative organization had, prior to the passage of the Agricultural Adjustment Act, been utilized more comprehensively and more thoroughly by the milk industry, as a means of attacking its economic problems, than by any other major agricultural group. At a few spots elsewhere a comparably intense development of co-operative procedure and policy had taken place, notably in cranberries and California oranges. But milk producers' co-operatives were organized both intensively and extensively. They stretched from Maine to California. They had for years been federated in an important and active national organization with a permanent secretariat in Washington.

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[2] John D. Black, *The Dairy Industry and the AAA,* p. 344.

[3] There have been other statements purporting to show the amount of benefits in more definite and more optimistic terms.

[4] Even if it appears that the present supplementing of private organizational effort by government activity has shown itself an inadequate or unsatisfactory method of dealing with the several interests that are concerned in the milk business, there would be the question whether this experience sheds any light on the sort of agency which should in the national economic interests be set up to deal permanently with the highly important business of fluid milk production and distribution.

In such organizations as the Dairymen's League of New York and the Land o' Lakes Creamery Association of Minnesota, they had become leaders in their respective fields and had achieved an apparently permanent position. They had built up a rich store of intimate knowledge and analytical thinking on the problems by which this business has come to be confronted following the growth of large municipal areas and the reorganization of agriculture which has been necessitated by both the technical developments and the commercial evolution of our own and other countries. They had thought their way into the intricate problems with which they had been forced to come to grips with a persistence and penetration which is conspicuously lacking in most lines of agriculture. In the effort to meet these problems they had devised a variety of complicated and ingenious methods for organizing the purveyance of dairy products to the public and of influencing the course followed by dairymen in conducting productive operations for the purpose of supplying this market. Advice of educational agencies, plus a modification of the manner in which the consumer's dollar was distributed among the various individuals who participate in the process of supplying him with dairy products, was relied upon as the means for solving the problems of the dairyman. These methods are briefly set forth in Chapter X of this volume but with much more fullness in the companion book by John D. Black (*The Dairy Industry and the AAA*).

The point which we wish to make of all this in drawing together our conclusions with reference to the wisdom of AAA proposals is that the growth of co-operative effort and of private enterprise, much of it of a large-scale corporate character, in the field of milk and dairy products distribution gives a distinctive setting to the effort toward comprehensive "economic adjustment" as visualized under the AAA.

Three general propositions will serve to set forth the nature of this situation. (1) The conditions of the business in the larger metropolitan markets, particularly of the industrial Northeast and North Central states were such that continuation of purely individual or small-unit types of organization between farmer and milk consumer, with the flexible competitive market which it implies, had long ago become impossible at least without a degree of government servicing that was not likely to develop (see Black, Chap. IX). On the distributive side the growth of large corporate organizations, regional or nominally national in scope, had inevitably led to counter organization among producer interests which, as we have said, had taken predominantly the co-operative form. (2) In spite of much that was sound and commendable in this type of organization, it had, not unnaturally, led to a succession of mutual adjustments in the nature of practical compromises between producer and distributor interests. In some quarters it was thought that these adjustments tended to ignore or subordinate the economic interest of the ultimate consumer. Experience seemed also to show that they lent themselves to the pressing of control to the point where prices of fluid milk in markets thus engaged were out of line with those in other parts of the dairy industry. (3) In this situation the Agricultural Adjustment Act proposed that the government come in as a third party to these evolving producer-distributor institutions, to the end that the whole matter be brought out into the daylight rather than running the risk of assuming a character of more or less clandestine deals between interests which by presenting a united front could protect their own position even if the interests of other producers or distributors or of the consumer were to some extent sacrificed in the process. It sought also to extend this system of regulation and such improvement as could be introduced into it to all markets in which local interests appeared to be ready to accept and participate in such an institutional development.

Shall we now accept the undoubted difficulties and the somewhat doubtful benefits of two years' experimentation along this line as sufficient evidence that we should go back to the antecedent condition—the aggressively developing but imperfectly regulated tug-of-war between large and powerful corporate groups of processors and distributors and such producer groups as grow up in the counter organization movement of the co-operatives? Or shall we continue the AAA devices as agencies to promote and facilitate continuous and intensive study of the whole problem of purveying fluid milk and related dairy products to our urban population in an effort to perfect these newly introduced modifications of the marketing system?[5] Are these devices calculated to see that the interests of the whole dairy industry are jointly considered in due relation to one another and at the same time to other branches of agriculture and of agriculture to the whole economic structure?

As to how the super-organization provided under the AAA squared with the purpose just stated, there has been a divergence of opinion. In the main, co-operatives and distributors have manifested a desire to have this a collective bargaining set-up in which producer and trade interests could effect their own compromises and simply have the Adjustment Administration as an agency for regularizing a comprehensive collective bargaining organization which would bring previous "independent" interests into their closed shop. This view makes the Adjustment Administration an agency not vested with any real control over the nature of the adjustments arrived at, but rather one designed to render certain types of administrative service and to put the strong arm of government back of the enforcement of whatever bargains the coalition of distributors and producers' associations might arrive at.

A much more positive role than this is assigned to the government agency in the philosophy of the Adjustment Act and of the Adjustment Administration. It is conceived as being strongly influential, if not actually controlling, as to the schedule of prices arrived at. For a national body entrusted with responsibility for all geographic sections and all branches of agriculture, this would imply that its function would be to see that scientific and impartial study was given to all the factors of supply and of demand entering into a given milk marketing situation so that the general level of milk prices established and likewise the price differentials between different parts of the fluid milk structure were so related to the milk product industries and to competitive branches of agriculture as to stabilize the industry. This would mean maintaining as large and dependable a flow of milk, under required health standards, as the consuming public was willing and able to take at prices at which farmers could afford to produce. In practice, however, even the staff of the AAA in preparing agreements and licenses and the Administrator and Secretary of Agriculture in approving them have departed from this long-run and conservative view as to what could be accomplished in the way of price raising and have in some measure accepted the more militant and short-run views espoused by producer and distributor organizations.

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[5] A third alternative of making some entirely different attack on the whole problem is logically possible but outside the scope of this book.

Perhaps this was the only reasonable interpretation of the mandate by Congress. But certainly during the first two years of experimentation under the marketing adjustment provisions of the act more things were undertaken in more markets than could possibly be brought to successful fruition. The milk groups in many small markets where producer and distributor organization had not been carried far nor had any long period of growth displayed a naive faith that swift and spectacular results could be accomplished by the mere legal provisions of the new statute. In some degree against their better judgment, but in some degree also because of an easy optimism of their own, various persons in the AAA lent themselves to the formulation of marketing plans which were from the start unworkable in the markets to which they were applied. In some cases the difficulty grew out of the attempt to take elaborate price mechanisms which had been worked out over a long period of time in the larger markets and apply them to quite different situations in markets whose general conditions were such as to need or permit only a much simpler pricing system.

What appears to have been proved in these two years of operation is that the results which can be accomplished through controlled marketing under the "centralizing power of government" are much more narrowly circumscribed by economic limitations than many people supposed in the summer of 1933. What has not yet been demonstrated is whether, in certain large metropolitan markets where complex situations require a degree of centralization greater than or different from that already developed under co-operative and distributor auspices, a government agency of the sort provided under the Adjustment Act would permit the government to play a positive role which would be of real and lasting benefit to the milk industry. It is the writer's belief, however, that with the more careful definition of the terms of the experiment provided under the recent amendments and with the disillusioning and enlightening experiences of the past two years and the narrowing of the area of experimentation (with prospects of coming down to a dozen or fifteen markets) it is highly desirable that we continue for the present the legal authorization under which we may continue the effort to improve methods of purveying fluid milk to metropolitan markets. The argument for such a view will be set forth more fully after we bring the other part of the marketing adjustment field into the picture.

GENERAL CROPS

Turning now to "general crops," we are confronted by the question of whether prices or incomes were enhanced not for a single commodity but for some 25 distinct products for which active operations have been undertaken under the various marketing agreements made effective in this group. Moreover, some of these commodities are further subdivided either geographically or according to type or method of handling. For instance, asparagus is divided between the fresh product and the canning crop. Citrus, which is counted as one in our list of 25 commodities, would really need 7 separate price studies if we were attempting a statistical measure of price results and income benefits, since there are three separate operating territories covered by agreements and each produces at least two of the three distinct types of fruit—oranges, tangerines, and grapefruit. For all the commodities or subdivisions for which marketing plans have been put into active operation, the economic circumstances in the producing section and the market situation show distinctive differences which were influential in determining the precise terms of the agreement and license entered into and which have conditioned its operation. In some cases it would be extremely difficult to demonstrate any actual pecuniary advantage from the operation of the marketing plan, whereas in others a striking price improvement is clearly evident, and there seems good reason for ascribing a substantial part of this gain to the influence of factors resulting from the license. (See pages 145, 170, 175, 176, 332.)

The significance of marketing adjustment has been slight indeed as compared with production adjustment and its accompaniment of benefit payments, if we are to judge the matter in terms of the additional income diverted toward the agricultural class and of its possible effect in stimulating or retarding economic recovery or of contributing over a period of time to a more economically sound and stable agriculture as part of our national economic structure. The aggregate of price enhancement and benefit payments alone on staple crops subjected to production control programs during the past two years approaches a billion dollars (partly offset by that part of processing taxes which was shifted back upon the producer). It would be a hardy calculator indeed who would undertake to demonstrate that there had been additions to producers' incomes as a result of marketing adjustment efforts covering special crops which would total more than 25 million dollars.[6] Even this gain has been in part offset by costs of administration borne by the government and by assessment on handlers, not to mention a considerable amount of unpaid labor and no little cash expense incurred by their promoters in connection with the preparation or the subsequent operation of these undertakings.

But even if there has been no impressive and immediate pecuniary gain to the groups affected as a result of this venture, can we discern other and perhaps broader fields of usefulness in which it has demonstrated its value to these groups as an addition to or modification of the economic institutions under which the commercial distribution of these products is effected?

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[6] H. R. Wellman, former head of the General Crops Section of the Adjustment Administration comments (in private correspondence): "I believe I can demonstrate that the agreements in California resulted in an increase in returns to growers over what they would have been without agreements, at least 15 to 20 million dollars." The bulk of the general crops agreements which became effective were of course located in California, though some benefit is apparent on agreements in the Northwest and in Colorado, Texas, and the Southeastern states. Probably the largest benefit under agreements in this group was derived by Florida celery producers. The control committee states that growers received "about 60 to 80 cents more per crate during the weeks that proration was in effect than they had received during the corresponding weeks the previous season. Many factors entered into the price and market supply of celery, but it seems to us that the control movement was the largest single factor responsible for this increase in growers' returns." If we impute 50 cents per crate of gain as due directly to the agreement, this would show a benefit of approximately 1 million dollars. In all probability 50 cents per crate is too large an allowance.

Throughout this book we have emphasized the point that marketing adjustment under the AAA is essentially an extension of the philosophy and practices of group marketing which have been evolving under the co-operative movement in the United States during the past 75 years. Certain of its distinctive manifestations in the fluid milk field have already been discussed. Developments in the horticultural field have likewise been vigorous and original, but they have taken on different forms because of the differing circumstances in the industry. Whereas fluid milk co-operatives seek to organize the various sources of the commodity as the supply converges upon a particular consuming center, the horticultural co-operatives seek to organize the distribution of supplies from a specialized area of intensive commercial production among all the possible consuming centers in which it may find a market. And whereas the milk co-operatives are preoccupied with maintaining a continuous flow of product which is produced and consumed every day in the year, the horticultural co-operatives are to a considerable extent concerned in making adjustment to sharp fluctuations of supply which these products are subjected to because of the growing conditions of the given year. They are concerned also about short-run emergencies due to the great irregularity in time and rate of ripening or the marketable quality of the product in response to the vicissitudes of rain, heat, frost, insects, and disease.

They have felt, therefore, a strong need of an organization designed along lines of service and protection, assisting the whole group in distributing its product so efficiently as to mitigate the peculiar hazards to which it is subject. Being geographically remote from a diverse and rapidly changing market, they have need of the best of market news service, skilful routing and diversion of shipments, inspection, handling, and offering of supplies in the market. Equalization of offerings has meant diverting supplies from markets where demand was least satisfactory or withholding them at times when demand was insufficient to pay selling, shipping, packing, and harvesting charges, together with any other cost items that the grower might see fit to include in the supply price to which he would hold if he knew in advance the return which his product would bring if put on the market.

In commodities such as these, characterized in general by an inelastic type of demand, having high marketing costs, and being produced under specialized types of farming, poorly organized marketing results in losses so severe as frequently to threaten the solvency of whole producing sections, including the towns and cities to which the farming areas are tributary. Thus bankers and merchants have joined the farmers in supporting comprehensive moves for so-called "orderly" marketing.

In so far as such movements result in more efficient handling of the product and the avoidance of sending it into markets which are unable or unwilling to repay the costs incurred in getting it there, it would seem that there is no question as to the soundness of this movement to bring the distributive process under devices of orderly control. But in proportion as success is achieved, costs reduced, losses eliminated, and the general level of return improved, twin difficulties for the voluntary organizations come as the children of this prosperity.

THE WEAKNESS OF INCOMPLETE CONTROL

On the one hand, the co-operative is threatened with progressive loss of membership. The improved general condition of the market reacts favorably upon persons outside the co-operative as well as those within, thus tempting the less group-minded to enjoy these benefits without any of the costs incidental to the support of the co-operative organization. This may result in dissatisfaction on the part of members of the co-operative and their desertion from its ranks in numbers sufficient to impair its work or cause its dissolution. Or it may result in such interference with the scheme of group marketing that the co-operative cannot show benefits commensurate with the burden imposed on the members—which of course is proportionately greater as the number of non-participants increases. This chronic difficulty of co-operatives has resulted in the search on their part for some means by which, if a majority of the group wish to launch a group undertaking, it can be made binding upon all.

It was only after many years of legislative evolution that it finally became the declared public policy for practically all the states and for the federal government to permit producers to effect such group marketing without thereby running afoul of the prohibitions of the anti-trust laws.[7] The federal law, however, coupled this permission with a specific application of the "rule of reason," giving the Secretary of Agriculture powers of review of the actions taken by such group organizations and the making of a finding of fact as to whether they resulted in any unreasonable enhancement of prices.[8] This, however, gave the co-operatives power only of securing such centralization as could be attained by the voluntary adhesion of members. Since this exposed them to the weakness discussed above, they sought to remedy it by various "clearing-house" arrangements.

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[7] E. G. Nourse, *Legal Status of Agricultural Co-operation,* Chaps. I-IX.

[8] The same, pp. 252-61.

A "clearing house" is essentially a trade association of co-operative distributors (who sometimes are also processors) with non–co-operative distributors so as to effect a centralization of the whole marketing process or at least to enlarge the control of the commodity by bringing in the product of additional growers which was handled by non-co-operative distributors. We have had occasion to refer to such enterprises and to the fact that one case at least had the implicit sanction of federal authority (see pages 99, 133). There was, however, a good deal of nervousness among those who embarked on such undertakings and a fear which kept others from taking this step even where they would have been glad to join in a movement toward grower co-ordination of market operations.

This situation led to the pressure for inclusion of a provision for marketing agreements between distributors and processors (including co-operatives) in the Agricultural Adjustment Act. But the inability of trade organizations to command the support of all members of the trade, just as the co-operatives were unable to embrace all producers in their ranks, led to the addition of the licensing feature, now transformed into the "orders" section of the act. This gives rise to the attack on this section as being an improper "regimentation" of industry.

As a first step in understanding the issue, we should recall the nature of the controls imposed and the extent to which they go. (1) There is no control of production, although the methods of settlement included under milk licenses are distinctly designed to influence the comparative profitableness of milk production under particular circumstances and this would probably have some repercussions on the total amount produced. (2) It does not require any producer to dispose of his product to or through a processor or distributor, co-operative or otherwise, different from the one of his own choice. (3) It does not require that distributors or processors dispose of their product in markets or through agencies other than the ones which they would normally employ. (4) It *does* prevent all or certain producers from disposing of product of certain qualities for which they might otherwise find a market which they regarded as sufficiently remunerative. Or it may prevent all producers from disposing of as much of their product as they might otherwise be able to find a market for.

Assuming that the major price objectives of this manipulation of supplies were successfully accomplished, it would mean that producers as a whole would secure a better income under controlled marketing than under individual marketing. Certain individuals, however, would presumably receive less than their proportionate share of this gain, no gain, or even conceivably some net disadvantage.

The issue which is thus raised is one of political science rather than of economics, namely; shall we permit a government agency thus to step in as the arbiter of economic fortunes and put the economic activities of the individual under the constraint of group organization on the grounds that the group as a whole will benefit from this governmental control of private action even though the relative or absolute position of certain individuals is prejudiced? The only way in which economic analysis could be used to aid in the solution of this problem would be in showing how this type of control affects the development of the given branch of agriculture or, by enhancing the price of the product, tends to burden the economic system in general. In other words, we must admit that there is a restraint of individual freedom of action under licenses or orders and leave it to others to argue whether such restraint is harmful or improper according to political, ethical, or other criteria.

THE DANGERS OF COMPLETE CONTROL

This brings us to the second of the difficulties pointed out (page 362) as arising from the group marketing movement initiated by the co-operatives and carried much further by the agreement and license provisions of the Adjustment Act. This is the danger that the power to control supplies would be so used or misused as to result in long-run disadvantage to the industry itself. It is a well-known fact that not a few of the voluntary co-operatives have, at times when circumstances were favorable for price advancement, over-reached themselves, forced prices to ill-advisedly high levels, and given the industry an unwholesome boom that eventually led to their own downfall.

In the words of H. R. Wellman:

> . . . It is becoming increasingly apparent that when any group has the power to control the price of the commodity it sells, it tends to raise the price too high. On the one hand, high prices tend to retard consumption, and, on the other hand, they tend to increase production, and the higher the price in relation to the prices of competing products, the more pronounced are these tendencies. This danger is not confined to voluntary programs, but may be equally serious, if not more serious, under marketing agreements and licenses, since the degree of control is greater.[9]

[9] *Some Economic Aspects of Marketing Agreements for Fruits and Vegetables,* paper presented at annual meeting of Western Farm Economic Association, Corvallis, Ore., Aug. 12-13, 1935.

Experience under the marketing adjustment phase of the AAA is too brief to appraise the results which will follow if this system is continued. We have already referred to the divergence of opinion among informed persons as to whether the price enhancement effected under the cling peach agreement resulted in an unwholesome increase in the planting of peach trees, and to the fact that asparagus planting threatened to be overdone until prices of alternative crops rose sharply and checked asparagus acreage. The favorable prices for Florida celery obtained in the 1934-35 season occurred in a year when competition from other areas was abnormally low, and it still remains to be seen whether producers will by this experience be led to an unwarranted expansion of plantings next year.

Unless the administrative agencies in charge of such agreements show the wisdom and courage necessary to keep prices down to a point which is not unduly stimulative, the effect of these so-called "adjustment" undertakings would be to stimulate spurts of activity which would unsettle rather than stabilize the industry. Progressive over-development would eventually produce conditions of oversupply and low prices which would lead to breakdown of the control and conditions worse than those which led to initiating the undertaking in the first place. This danger is particularly subtle in the case of orchard products, where anywhere from 5 to 15 years may intervene between the planting of the trees and the period of full bearing.

On the other hand, the danger of over-stimulation as a result of favorable prices is present even where there is no comprehensive organization for marketing purposes, and real estate agents, nurserymen, chambers of commerce, and "boosters" of all varieties do not hesitate to take full advantage of it in their own interest. Might controlled marketing be used as a safeguard against such forces? If a substantial majority of the seasoned producers in a given line of agricultural production were to invoke the powers conferred on the Secretary of Agriculture under the "orders" provision of the amended act to inaugurate a control program which would hold prices down at a time when they might otherwise be strongly advanced, such an effort would have the effect of stabilizing the industry at a time when in the absence of a control device it might suffer from over-development. Whether successive secretaries of agriculture would, as such circumstances arose, have within their department the technical advice necessary to make wise decisions and the political fortitude to put them into effect, is a question which cannot be answered in advance, but on it the wisdom and practicability of the whole proposal must ultimately rest.[10]

THE PRESENT ISSUE

What was said on page 358 in the partial summary with reference to fluid milk agreements and orders applies also to agreements and licenses in the general crops field. Two years of experience have demonstrated "that the results which can be accomplished through controlled marketing 'under the centralized power of government' are much more narrowly circumscribed by economic limitations than many people supposed in the summer of 1933." It has likewise been demonstrated that a degree and type of control which are both feasible and effective in one field of agriculture and logically as applicable in a closely similar type of production or in another area of the same industry may be rendered utterly unworkable because of local sentiment or shortcomings of personnel. This leaves still undetermined the question whether, in meeting the distinctive hazards in these lines of production, the tri-partite coalition of producers, handlers, and government can be made (a) permanently beneficial to these industries without (b) inflicting improper burdens on other parts of our economic system.

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[10] See in this connection the provisions of the walnut agreement for the release of "reserve tonnage" at a time when it would tend to check the advance of market prices (p. 192).

The latter and broader question does not come within the scope of the present volume but will be deferred to a subsequent general appraisal of the whole adjustment scheme. On the former question, we have already indicated that the evidence afforded by experience thus far is inconclusive. The nature of the issue, which is submitted to the pragmatic test of time, however, is quite clear.

On the one hand are those who would leave every producer, processor, and distributor free to seek what he conceives to be his own personal advantage in each marketing situation as it develops from day to day and from season to season, believing that through flexibility and competitive freedom of each individual the soundest adjustment of the whole matter for each industry would work itself out.

On the other hand are those who believe that the geographical and technical conditions of the modern metropolitan milk market and the hazards of highly specialized commercial production of horticultural products remote from the areas in which they are consumed create risks so great that they can be effectively met only by developing agencies for the more comprehensive co-ordination of individual efforts. They believe that the device provided in the amended Adjustment Act for centralizing decisions in a scheme of commercial government in which producers and handlers legislate through a representative body subject to the veto of the Secretary of Agriculture will bring about a more successful guidance of these industries in the long run. This is to conceive the marketing agreement with the implementing device of Secretary's orders as being essentially an educational force for co-ordinating the thinking and action of individuals in homogeneous groups following agricultural pursuits. It is a device of considerable economic promise but by no means as yet brought to a state of perfection. Many years of patient experimentation and refinement would be required to develop its full potentialities and at no time would its operations be better than the quality of the men who man it.

It is evident in view of what was said on page 364 as to which decisions are and which are not delegated to this supervisory body, that marketing agreements and orders do not constitute a mandatory regimentation of the whole process of production and distribution. Instead they simply furnish legal sanction under which groups may delegate the settlement of certain major questions of marketing strategy to a novel type of legislative and executive agency. Under this scheme:

1. A majority interest (defined in Section 8)[11] may decide that their industry is one having economic hazards which make it desirable to invoke the protective features of the act. They thereupon advise with Adjustment Administration officials in setting up the terms of the control plan, subject to the approval of the Secretary.

2. If the conditions of the industry are such as to require it, this control may be made continuous in operation, as in

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[11] Appendix C, p. 429.

fluid milk; or it may be made to apply to certain entire crop years of flush production or impaired demand, as with dried fruits, nuts, or canning crops, or only to meet emergencies within the crop year, as in the case of fresh fruits and vegetables. A representative body chosen from the industry, in consultation with the professional staff of the Adjustment Administration and on approval of the Secretary, decides whether or when the protective device shall be invoked.

3. The industry representatives, with the concurrence of the Secretary pursuant to the advice of his staff, decide the specific conditions under which all members of the group will offer their product to the market and, under the provision of the adjustment plan, the manner in which this supply schedule will be adhered to throughout the group.

The more thoughtful among the proponents of "controlled marketing" argue that as this system develops and matures, it will demonstrate its ability to arrive at sounder decisions than would be reached through unco-ordinated action because it combines a maximum of free individual initiative and choice covering operative details for both producers and handlers with the necessary minimum of centralization on basic questions of marketing strategy. They point out also that the agency entrusted with these major decisions combines the intimate knowledge of producers and handlers as to the complex features affecting their individual businesses with the longer and broader point of view of a national agency entrusted with the responsibility for advancing as far as possible the prosperity of all the rival areas of production and of all the interrelated branches of agriculture. Since the interests of the producer, the processor, and the distributor are by no means identical and all of them may diverge more or less from other interests which must be within the concern of the Secretary of Agriculture, it is urged that this method of arriving at decisions involves a system of checks and balances which conduces to well-balanced decisions. Finally, the point is often made that since all the commodities in this group have a highly competitive market and since control devices are applicable only at certain spots within the field, attempts to use control to derive monopoly advantage rather than to guard against peculiar and in the main intermittent hazards of the industry are remote.

While the validity of this favorable view cannot be said to have been clearly established, the writer believes it is desirable that further experimentation with marketing agreements and orders as provided in the amended act be carried on to see what branches of agriculture they are technically applicable to and what possibilities this new development in our marketing institutions has for being used to the long-run advantage of farm producers. Whether devices calculated to bring this degree of prosperity to agricultural groups are economically dangerous to other classes is a question which is left to the concluding volume in this series.

APPENDIXES

APPENDIX A

MARKETING AGREEMENT FOR GROWERS AND SHIPPERS OF CALIFORNIA FRESH DECIDUOUS TREE FRUITS EXCEPT APPLES

ARTICLE I. PURPOSES

The parties to this agreement are the contracting shippers (including associations of growers), the contracting growers of deciduous tree fruits, except apples, grown in the State of California, and the Secretary of Agriculture of the United States.

Whereas, it is the declared policy of Congress as set forth in Section 2 of the Agricultural Adjustment Act, approved May 12, 1933, as amended.

(1) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will re-establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the pre-war period August 1909-July 1914. In the case of tobacco, the base period shall be the post-war period August 1919-July 1929.

(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such a level as will not increase the percentage of the consumers' retail expeditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the pre-war period, August 1909-July 1914.

And—

Whereas, pursuant to the Agricultural Adjustment Act, the parties hereto for the purpose of correcting conditions now obtaining in the handling of deciduous tree fruits, except apples, in

California, and to effectuate the declared policy of the act, desire to enter into a marketing agreement under the provisions of Section 8 (2) of the act;

Now, therefore, the parties hereto agree as follows:

ARTICLE II. DEFINITIONS

SECTION 1. *Definition of terms.* As used in this agreement:

1. "Secretary" means the Secretary of Agriculture of the United States.

2. "Act" means the Agricultural Adjustment Act, approved May 12, 1933, as amended.

3. "Person" means individual, partnership, corporation, association or any other business unit.

4. "Fruit" means any or all deciduous tree fruit of any or all varieties grown in the State of California, except apples, and distributed in fresh form.

5. "Grower" means any person who produces fruit, as owner or tenant, for sale or shipment in the current of or in competition with, or so as to burden, obstruct, or in any way affect interstate and/or foreign commerce.

6. "Shipper" means any person engaged in selling, marketing, shipping, consigning, handling, and in any other way dealing in fruit from or within California in person or as or through an agent, broker or representative, employee or otherwise, in the current of or in competition with, or as to burden, obstruct, or in any way affect, interstate and/or foreign commerce.

7. "Ship" means selling, marketing, shipping, consigning, handling and in any other way dealing in fruit in the current of or in competition with, or so as to burden, obstruct, or in any way affect interstate and/or foreign commerce.

8. "District" means any geographical area within the State of California as is hereinafter or hereunder delimited.

9. "Concentration point" means any railroad center in the State of California designated by a commodity committee as a concentration point.

10. "Books and records" means any books, records, accounts, contracts, documents, memoranda, papers, correspondence, or other data pertaining to the business of the person in question.

11. "Subsidiary" means any person, of or over whom or which,

a shipper or an affiliate of a shipper has, or several shippers collectively have, either directly or indirectly, actual or legal control whether by stock ownership or in any other manner.

12. "Affiliate" means any person and/or any subsidiary thereof, who or which has, either directly or indirectly, actual or legal control of or over a shipper, whether by stock ownership or in any other manner.

13. "Agreement" means the marketing agreement entered into by the parties hereto.

14. "Variety" means any sub-species of fruit generally recognized by the trade, such as the Santa Rosa plum, Bing cherry, Royal apricot, Elberta peach and Bosc pear.

ARTICLE III. CONTROL COMMITTEE

SECTION 1. *Members.* A control committee shall be established consisting of twelve shipper members and thirteen grower members who shall be selected in accordance with the provisions of this article and shall serve until February 1 of the year following the date of their respective selections and until their respective successors are selected. The initial members and their alternates shall be those named in Section 2 of this article. Their respective successors (other than those selected to fill vacancies) shall be selected annually at least fifteen days prior to the termination of the term of office of their respective predecessors. No delay in the selection of any successor shall be deemed to invalidate any such selection.

SEC. 2. *Selection of members.* 1. Twelve members and each of their respective successors shall be selected by shippers of fruit. Such initial shipper members and their alternates shall consist of the following persons:

. . . .

The respective successors of such initial shipper members and their alternates shall be selected in the following manner:

(a) Any shipper or group of shippers shipping at least one-third of the total tonnage of fruit shipped during the preceding shipping season by all shippers shall be entitled to select four members and their alternates to the control committee. Such shipper or group of shippers shall be known as an elective body. The person or persons comprising the elective body shall cast their vote on the basis of the quantity of fruit shipped by such person or persons. Voting shall be cumulative. The persons comprising the elective body shall not participate in more than one such body.

(b) In the event the full shipper membership and their alternates of said control committee be not selected by elective bodies within fifteen days of the date of the expiration of the term of office of members of the control committee, as provided in Section 1 hereof the manager of the said control committee shall announce a time and place of an election meeting of all shippers of fruit who have not singly nor combined formed an elective body nor in any manner participated therein. At said meeting all such shippers shall select on the basis of one vote each all remaining unselected shipper members and their alternates to said control committee. No shipper who either singly or combined formed an elective body or participated therein shall participate in or vote at such meeting.

2. Thirteen members and each of their respective successors shall be growers of fruit. Such initial grower members shall consist of the following persons:

. . . .

The respective successors of such initial members shall be selected by the members of the respective commodity committees hereinafter designated as follows:

(a) Four members shall be selected by the Bartlett pear commodity committee.

(b) Two members shall be selected by the peach commodity committee.

(c) Three members shall be selected by the plum commodity committee.

(d) One member shall be selected by the apricot commodity committee.

(e) One member shall be selected by the cherry commodity committee.

(f) Two members shall be selected by the winter pear commodity committee.

For the purposes of this section a member selected by such commodity committee shall be an individual person who produces at least fifty-one per cent of the total fruit shipped by him. In the selection of such members of the control committee, each member of the respective commodity committees shall have but one vote.

Sec. 3. *Alternates.* Alternates may be selected for each member of the control committee by the person, persons or group by whom or which, and in the same manner as, such member is selected. The alternates shall have power to act in the place and stead of such member (a) in his absence, and/or (b) in the event of a vacancy arising by reason of his removal, resignation, disqualification, or otherwise, for his unexpired term until a successor has been selected.

Sec. 4. *Vacancies.* To fill any vacancy occasioned by the removal, resignation or disqualification or otherwise of any member or alternate of the control committee, a successor for his unexpired term shall be selected within fifteen days after such vacancy occurs, by the person, persons or group, and in the manner set forth in Section 2 of this article.

Sec. 5. *Failure to select members.* If any member, successor of such member or alternate is not selected within the applicable period specified in this article, the Secretary may select a person, with full power to act as such member, successor or alternate, to serve until such member, successor or alternate is selected.

Sec. 6. *Organization and quorum.* 1. The control committee shall not perform any of its duties, or exercise any of the powers herein granted while there are more than seven vacancies in its membership.

2. A majority of all members of the control committee shall constitute a quorum and any action of the control committee shall require the concurrence of the majority of all members present.

Sec. 7. *Certification of members.* Upon the selection of any member or members of the control committee, the secretary of said control committee shall certify to the Secretary the name and address of each such member and of his alternate, if any, and the date or dates of their selection. The members and alternates, if any, so certified to the Secretary shall be deemed for all purposes to be the duly selected members and alternates of the control committee, subject, however, to the rights of any interested party to protest such selection in accordance with the applicable administrative orders issued by the Secretary.

Sec. 8. *Removal and disapproval.* The members of the control committee or any other committee created hereunder (including successors, alternates or persons selected by the Secretary), and any agent or employee appointed or employed by the control committee or by any other committee, shall be subject to removal by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the control committee or of any other committee, shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done prior to such disapproval and in reliance on or in compliance with such order, regulation, determination or other act of such committee.

Sec. 9. *Expenses of members.* Members of the control committee shall serve without compensation but shall be entitled to expenses necessarily incurred in the performance of their duties hereunder.

Sec. 10. *Powers and duties.* The powers and duties of the control committee shall include the following:

1. To elect a chairman and, from time to time, such other officers as it may deem advisable, and to adopt rules and regulations for the performance of its duties under this agreement.

2. To supervise the performance of this agreement and to act as intermediary between the Secretary and the shippers and the growers.

3. To appoint a manager, who shall also act as secretary of the several commodity committees, and such other employees as it deems necessary and to determine the salaries and define the duties of such employees.

4. To appoint and define the duties of additional committees or sub-committees to assist it in the performance of any of its duties and functions hereunder.

5. To establish additional commodity committee or committees for fruit covered by this agreement, and for which no commodity committee is established by Article IV hereof. Such additional commodity committee or committees shall be composed of seven members selected from districts designated by the control committee and shall have the powers and be subject to the duties of commodity committees expressly created hereunder, except that such additional commodity committee or committees shall not be entitled to representation on the control committee.

6. To investigate suspected violations of this agreement and to hear and dispose of all questions, disputes, and complaints arising in connection with the performance of this agreement. If a mem-

ber of the control committee shall be an interested party to any complaint or dispute or a representative of such an interested party, he shall, for the purpose of the consideration of such dispute or complaint, be disqualified as a member of the control committee. Such disqualification, however, shall not be deemed to create a vacancy in the control committee within the prohibition of Section 6 of this article.

7. To negotiate and confer with representatives of shippers and/or growers of fruit produced in other states and areas, with respect to the formulation or operation of a marketing agreement providing for the proration of shipments among the several areas in the United States where such fruit is grown.

8. To disapprove by affirmative vote of two-thirds of its total membership any action of any commodity committee. In determining such two-thirds vote any fraction shall be equivalent to one vote.

9. To re-define from time to time the districts into which the State of California has been delimited by this agreement; to change the number of members of which any commodity committee is composed and the districts from which such members are to be selected: *Provided, however,* That if any of these changes are made so far as practicable each member shall represent an equal quantity of the particular fruit shipped during the preceding three years.

10. To handle all financial matters, including the collection of assessments and the making of disbursements incurred in connection with the administration of this agreement by all of the committees established hereunder.

11. To establish a sales managers' committee, which shall consist of seven members, who shall be selected by the shipper members of the control committee, at least one of whom shall represent a co-operative marketing association, which said sales managers' committee shall meet and advise with the commodity committee at all meetings which may pertain (1) to limitation of shipments as set forth in Article VI, (2) regulation of grades and sizes as set forth in Article VII, and/or (3) regulation of railroad shipments as set forth in Article VIII.

12. With the approval of the Secretary to incorporate as a nonprofit organization, and, as so incorporated, to exercise all the duties

and possess all the powers specified in this agreement: *Provided,* That such corporation shall not exercise powers expressly or by implication prohibited hereunder and that it shall be subject to all the duties and obligations imposed upon the control committee hereunder; and, *Provided, further,* That the stockholders and directors of any such corporation shall be members selected by the respective groups and persons as provided by this agreement.

13. To perform the functions and exercise the powers with respect to the method of the selection of members of the commodity committees set out in Section 4 of Article IV.

SEC. 11. *Disqualification.* No shipper shall be entitled to participate in the selection of members of the control committee in accordance with the terms of this article if he has failed to pay his contribution pursuant to Article V of this agreement; or pursuant to any license supplementary hereto, issued pursuant to Section 8 (3) of the act.

SEC. 12. *Reports, books and records.* 1. The control committee shall, upon the request of the Secretary, furnish him such information as he may request, and all the books and records of the control committee shall, at any time, be subject to the examination of the Secretary.

2. The control committee shall keep books and records which will clearly reflect all its transactions.

3. The control committee shall promptly submit to the Secretary certified copies of minutes of its meetings.

4. Upon the termination of this agreement, the foregoing provisions shall continue to apply to the members of the control committee, functioning at the time of such termination, until such members have been discharged in accordance with the provisions of Paragraph 3 of Section 13.

SEC. 13. *Funds.* All funds received by the control committee pursuant to any provision of this agreement shall be used solely for the purpose therein specified, and shall be accounted for in the following manner:

1. During the duration of this agreement, the Secretary may require the control committee or any other committee created hereunder and their members to account for all receipts and disbursements and/or to deliver all funds on hand, together with all books and records of the committee, at such time or times, in such manner

and to such person, as the Secretary shall direct, and to execute such assignments or other instruments as may be necessary or appropriate to vest in such person full title to all of the funds and/or claims vested in the committee pursuant to this agreement.

2. Upon the expiration of the term of office of any member of the control committee or any other committee created hereunder, such member shall account for all receipts and disbursements and deliver all funds in his hands, together with all books and records in his possession, to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the funds and/or claims vested in such member pursuant to this agreement and/or license issued supplementary hereto pursuant to the act.

3. Upon the termination of this agreement, and license issued supplementary hereto pursuant to Section 8 (3) of the act, the members of the control committee then functioning shall continue as joint trustees for the purpose of this agreement and such license of all funds then in the possession or under the control of the control committee, including claims for any funds which are unpaid at the time of such termination. Said trustees (a) shall continue in such capacity until discharged by the Secretary, (b) shall from time to time account for all receipts and disbursements and/or deliver all funds on hand, together with all books and records of the control committee and the joint trustees, to such person as the Secretary shall direct, and (c) shall, upon the request of the Secretary, execute such assignments or other instruments as may be necessary or appropriate to vest in such person full title to all of the funds and/or claims vested in the committee pursuant to this agreement and/or pursuant to any license issued supplementary hereto. Any funds collected for expenses pursuant to Article V and held by such joint trustees or such person over and above amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the joint trustees or such other person in the performance of their duties hereunder, shall, as soon as practicable after the termination of this agreement and of any license issued supplementary hereto pursuant to Section 8 (3) of the act, be returned to the shippers pro rata in proportion to their contributions made pursuant to this agreement and/or pursuant to any license issued supplementary hereto.

4. Any person to whom funds and/or claims have been delivered by the control committee or its members, shall be subject to the same obligations and duties with respect to said funds as are hereinabove imposed upon the members of said committee.

Sec. 14. *Collection of funds.* The control committee is authorized and empowered, subject to the prior approval of the Secretary, to institute legal proceedings in the name of its individual members as a committee and to take such other steps as may be necessary to collect or enforce the payment of funds from persons liable therefor, pursuant to the provisions of this agreement. Upon the termination of this agreement and license issued supplementary hereto pursuant to Section 8 (3) of the act, the foregoing power shall (unless otherwise provided in the notice of termination) continue in the members of the control committee as trustees pursuant to Section 13 of this article with respect to any funds unpaid at the same time of such termination: *Provided,* That such power may at any time be terminated by the Secretary and vested in such other person as the Secretary may direct. Nothing herein contained shall be construed to be in derogation or modification of the rights of the Secretary at any time to institute legal proceedings or to take such other steps as may be necessary to collect or enforce the payment of any such funds.

ARTICLE IV. COMMODITY COMMITTEE

Section 1. *Members.* Commodity committees shall be established, each consisting of seven members, who shall be selected in accordance with the provisions of this article, and who shall serve until January 1 of the year following the date of their respective selections, and until their respective successors are selected. The initial members shall be those named in Section 4 of this article. Their respective successors (other than those selected to fill vacancies) shall be selected annually at least fifteen days prior to the termination of the term of office of their respective predecessors. No delay in the selection of any member or successor shall be deemed to invalidate any such selection.

Sec. 2. *Number of commodity committees.* A commodity committee shall be established for each of the following fruits:

Bartlett pears, winter pears, peaches, cherries, plums, apricots, and for such other fruit as the control committee may designate pursuant to Paragraph 5 of Section 10 of Article III of this agreement.

Sec. 3. *Definitions of districts.* For the purpose of selection of commodity committees, the area covered by this agreement is hereby delimited into the following districts:

. . . .

Sec. 4. *Selection of members.* 1. Selection of members of commodity committees shall be according to districts as follows:

(a) *Winter pear commodity committee:*

Five members from District No. 8.
One member from District No. 4.
One member from all of the areas covered by this agreement not included in Districts 8 and 4.

[Selection of Bartlett pear, peach, plum, apricot, and cherry commodity committees similarly provided.]

2. The initial members of each commodity committee shall consist of the following persons:

. . . .

The respective successors of such initial members of each such commodity committee shall be growers selected at a general election at which all growers of the fruit involved shall be entitled to vote. At each such election each grower shall be entitled to cast but one vote on behalf of himself, agents, partners, affiliates, subsidiaries and representatives. Nominations and elections of commodity committee members shall be supervised by the control committee, which from time to time shall prescribe therefor such procedure as shall be fair to all concerned.

Sec. 5. *Alternates.* Each group selecting a member of a commodity committee may, in the same manner, at any time select an alternate to act in the place and stead of such member in his absence and/or in the event of his removal, resignation or disqualification, until a successor for his unexpired term has been selected.

Sec. 6. *Vacancies.* To fill any vacancy occasioned by the removal, resignation, disqualification, or otherwise, of any member of the commodity committee, a successor for his unexpired term shall be selected within fifteen days after such vacancy occurs, by the person, persons or group, and in the manner indicated in Section 4 of this article.

Sec. 7. *Failure to select members.* If any successor shall not be selected within the applicable period specified in this article, then the Secretary may select a person with full power to act as a member and to serve until such successor is selected.

Sec. 8. *Organization.* A commodity committee shall not perform any of its duties or exercise any of the powers herein granted while there are more than two vacancies in its membership.

Sec. 9. *Certification of members.* Upon the selection of any member or members of a commodity committee, the secretary of said commodity committee shall certify to the Secretary the name and address of each such member, and of his alternate, if any, and the date or dates of their selection. The members and alternates, if any, so certified to the Secretary shall be deemed for all purposes to be the duly selected members or alternates of such commodity committee, subject, however, to the right of any interested party to protest such selection in accordance with the applicable administrative orders issued by the Secretary.

Sec. 10. *Removal and disapproval.* The members of a commodity committee or of any other committee created hereunder (including successors, alternates, or persons selected by the Secretary) shall be subject to removal by the Secretary at any time. Each and every order, regulation, decision, determination or other act of a commodity committee, or of any other committee, shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void except as to acts done prior to such disapproval and in reliance on or in compliance with such order, regulation, determination, or other act of such committee.

Sec. 11. *Expenses of members.* Members of a commodity committee shall serve without compensation, but shall be entitled to such expenses as are necessarily incurred in the performance of their duties hereunder and as are approved by the control committee.

Sec. 12. *Powers and duties.* The powers and duties of a commodity committee shall include the following:

1. To elect such officers as it may deem advisable, and to adopt

rules and regulations for the performance of its functions under this agreement.

2. To select by an affirmative vote of two-thirds of its membership the grower members of the control committee pursuant to Section 2 of Article III of this agreement.

3. To submit to the control committee for the approval of said committee a budget of its expenses.

4. With respect to the fruit under its jurisdiction, to establish in each district defined in Section 3 hereof growers' advisory committees to be composed of growers of said districts which said committees shall consult and advise with the commodity committee, and to establish other committees to aid it in the performance of its duties hereunder.

5. With respect to the fruit under its jurisdiction, to institute a limitation of shipments pursuant to Article VI and/or a regulation of grades or sizes of fruit shipped pursuant to Article VII and/or a regulation of carload shipments pursuant to Article VIII.

6. To furnish to the control committee a record of the minutes of its meetings.

7. To keep books and records which will clearly reflect all its transactions.

8. To furnish the Secretary, upon his request, such information as he may call for, and all the books and records of any commodity committee shall, at any time, be subject to the examination of the Secretary.

9. With respect to the fruit under its jurisdiction, to possess the powers and exercise the duties set forth in this agreement.

ARTICLE V. EXPENSES

SECTION 1. *Expenses.* To carry out the provisions of this agreement and of any license supplementary thereto, issued pursuant to Section 8 (3) of the act, the control committee is authorized and directed:

1. To incur and/or to authorize any other committee to incur such reasonable obligations as may be necessary and proper, and to meet such obligations out of funds raised as herein provided;

2. To submit to the Secretary for his approval, subject to such notice and opportunity for hearing as the Secretary by adminis-

trative order or otherwise, may prescribe (a) an itemized budget of its estimated expenses including the expenses of the commodity committees for the foregoing purposes, and (b) an equitable basis upon which the funds necessary to support such budget shall be contributed by the shippers.

Sec. 2. *Contributions.* Upon the approval by the Secretary of such budget, each of the shippers agree to contribute to the control committee his share of the funds to be raised by it, in accordance with the basis of contribution submitted to and approved by the Secretary pursuant to Paragraph 2 of Section 1 of this article.

ARTICLE VI. LIMITATION OF SHIPMENTS

Section 1. *Purposes.* In order to increase returns to growers by adjusting the supply of fruit in view of market demands, each commodity committee may, from time to time, institute limitation of shipments of fruit of any variety or varieties under its jurisdiction as hereinafter provided.

Sec. 2. *Definitions.* For the purposes of this article "limitation period" means any period of time for which a commodity committee institutes a limitation of shipments; "fruit" means any quantity of fruit of any variety or varieties as defined in Article II of this agreement; "cold storage" means the retention of fruit in refrigeration storage exclusive of refrigerator cars, trucks or vessels, for a period of time longer than five calendar days; "available and intended for shipment" means the quantity of such fruit which (a) meets the requirements of Sections 791, 794, 803, 804, 805 and 806 of the agricultural code of the State of California, (b) conforms to the grade and/or size permitted to be shipped under Article VII hereof, (c) is ready or to be ready for shipment, and (d) growers or shippers intend to ship during the limitation period: *Provided,* That fruit in cold storage in the State of California shall not be included as available and intended for shipment unless (a) the quantity of such fruit not in cold storage and available for shipment is less than the quantity which the commodity committee deems advisable to be shipped during a limitation period, and (b) the shipper or grower handling such fruit files written notice with the commodity committee that he intends to ship such fruit during such limitation period.

Sec. 3. *Method of limitation.* In the event a commodity committee proposes to institute limitation of shipments, it shall determine (a) the limitation period, (b) the total quantity of fruit advisable to be shipped during the limitation period, and (c) the quantity of fruit available and intended to be shipped during the limitation period.

1. In determining the limitation period and the total quantity of fruit advisable to be shipped in such period, the commodity committee shall consider pertinent factors which in the opinion of the commodity committee may affect the problems as to the quantity of fruit advisable to be shipped, such as (a) current market prices, (b) supply on hand at the consuming markets, (c) probable supplies from competitive areas, (d) effect upon prices by supply in the past, (e) weather conditions in producing areas as affecting maturity and quantity of fruit, (f) probable demand in the consumers' area.

2. Each shipper who intends to ship any quantity of fruit during such limitation period shall report to the commodity committee, at such time and in such manner as said committee shall prescribe, the quantity of fruit available and intended for shipment in such limitation period which he has written authority from the owner or grower thereof to handle or to which he has legal title, together with the name of each such owner or grower and the quantity of fruit he is authorized to handle for such owner or grower and intends to ship during such limitation period.

3. Any grower having fruit available and intended for shipment during the limitation period which no shipper has authority to ship may report to the commodity committee the quantity which he has available and intended for shipment in such limitation period, at the same time and in the same manner as it prescribed for reports by shippers in Paragraph 2 of this section.

4. The commodity committee may check the accuracy of the report of any shipper or any grower and in so doing may among other things consider the records of production of the grower for previous years, and may revise on the basis of such check the quantity reported as available and intended for shipment by such shipper or grower. All reports by shippers or by growers to the commodity committee shall be substantiated or verified in such manner as the commodity committee may prescribe.

5. From the reports made pursuant to Paragraphs 2 and 3 of

this section and as the same may be revised pursuant to Paragraph 4 of this section, and by estimating fruit believed not reported pursuant to Paragraphs 2 and 3 of this section, the commodity committee shall determine the total quantity of fruit which is available and intended for shipment during the limitation period.

6. If the total quantity of fruit available or that may become available and intended for shipment exceeds the quantity deemed advisable to be shipped as determined pursuant to Paragraph 1 of this section, the commodity committee, by giving at least thirty-six hours' prior notice thereof to growers, shippers, and other interested parties by publication in a newspaper or newspapers of general circulation in the area or areas where such fruit is produced or from which it is shipped, or by such other means as are reasonably calculated to bring this information to their attention, may institute a limitation of shipments.

7. In the event fruit in cold storage is included as available fruit, in accordance with the provisions of Section 2 of this article limitations of shipments pursuant to this article shall not apply to available fruit not in cold storage but shall be applicable only to the fruit in cold storage intended to be shipped as reported pursuant to the provisions of said Section 2.

Sec. 4. *Allotments to shippers and growers.* In the event of the institution of a limitation of shipments, the commodity committee shall allot to each shipper reporting fruit available and intended for shipment, and to each grower who made no provision to have his fruit shipped by a shipper, the quantity which may be shipped by each such shipper and each such grower during said limitation period. Such proportionate share shall be determined by applying to the quantity available and intended for shipment by each such shipper or grower, as determined by the commodity committee, the percentage which the total quantity deemed advisable to be shipped is of the total quantity available and intended for shipment.

Sec. 5. *Division of shippers' allotments among growers.* During the limitation period each shipper shall abide by the allotment made to him pursuant to this agreement and/or any license supplementary thereto issued by the Secretary pursuant to Section 8 (3) of this act, and during such period each shipper shall, in so far as reasonably possible, divide his allotment among the growers for whom he had reported and from whom he accepts such fruit, by allotting to each such grower a quantity which shall be the same percentage of the total quantity allotted to such shipper as the total quantity available and intended for shipment by each such grower is of the total quantity available and intended for shipment by such shipper, as determined pursuant to this article. No shipper shall ship any quantity of said fruit during a limitation period which was not reported to the commodity committee in accordance with either Paragraphs 2 or 3 of Section 3 of this article.

Sec. 6. *Over and under shipments.* A shipper shipping in excess of his allotment during any limitation period shall be deemed to be violating this agreement unless the commodity committee shall permit him so to do. Such permission shall be given only on condition that double such excess shall be deducted from such shipper's allotment for the next succeeding limitation period. Any shipper shipping less than his allotment in any limitation period, may, with the permission of the commodity committee, add the amount of such undershipment to his allotment for the next succeeding limitation period, and only then if the next succeeding limitation period is consecutive without any intervening period during which no limitation is in effect.

Sec. 7. *Assignment of growers' allotments.* Any allotment made to a grower pursuant to this agreement, or any part thereof, may be assigned or transferred in writing to a shipper. If a shipper to whom the allotment has been transferred or assigned shall submit evidence to the commodity committee satisfactorily showing that such allotment, or any part thereof, has been assigned, or transferred to him and that he has written authority to ship the quantity of fruit represented by such allotment or part thereof, the shipment of such quantity by such shipper shall not be deemed an excess shipment hereunder.

Sec. 8. *Assignment of shippers' allotments.* Any shipper may, with the permission of the commodity committee, assign or transfer in writing all, or any part, of his allotment for any limitation period to any other shipper or shippers, and shipment by such other shipper or shippers within the limits of such assignment or transfer shall not be deemed an excess shipment.

Sec. 9. *Shipments for charity or for by-products.* Nothing in this article contained shall be construed to authorize any limitation on the right to ship fruit in any amount for canning, freezing, conversion into by-products, or for charitable or unemployment relief purposes: *Provided, however,* That the commodity committee may from time to time prescribe proper safeguards to prevent the fruit shipped for such purposes from being reintroduced into commercial channels as fresh fruit.

Sec. 10. *Export shipments.* Upon presentation of satisfactory documentary proof that fruit, other than pears, is to be exported to destinations exclusive of the continent of North America upon an outright sale basis, the appropriate commodity committee shall exempt such fruit from the operation of this article.

Sec. 11. *Reports to Secretary.* The Secretary shall be immediately notified of any order issued under this article. Any order of the commodity committee adopted pursuant to the provisions of this article shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and any such order may at any time be cancelled or modified in any way by the Secretary.

ARTICLE VII. REGULATIONS OF GRADES AND SIZES

Section 1. *Purpose of regulation.* In order to increase returns to growers by adjusting the supply and quality of fruit in view of market demands, if any commodity committee shall deem it necessary to limit the grades and/or sizes of designated varieties of fruit which may be shipped from any district or districts during a given period, it may order that only specified grades and/or sizes or a certain portion of such grades and/or sizes of the designated varieties of fruit may be shipped from such district or districts during such period.

Sec. 2. *Method and manner of regulation.* 1. In the event any commodity committee regulates the shipment of any variety or varieties of fruit in accordance with this article, thereupon whenever the commodity committee shall find that one-half of the estimated crop of such variety or varieties of fruit in any district or districts has been shipped, it shall, or at any time before one-half of the estimated crop of such variety or varieties of fruit in any district or districts has been shipped it may, determine and announce the percentages of grade and/or sizes of a given variety of fruit which are permitted to be shipped are of the total crop of that variety in such district or districts, and at the same time shall announce the procedure by which special certificates will be issued to growers as set forth in Section 3 of this article.

2. Orders issued pursuant hereto and announcements required to be made hereunder shall be announced by the publication in a newspaper or newspapers of general circulation to be selected by such commodity committee in the area where such fruit is produced and/or shipped or by such other or additional means as are reasonably calculated to bring such information to the attention of growers, shippers, and other interested parties. No order shall become effective sooner than twenty-four hours after notice thereof has been released, except that any order pertaining to the issuance of special certificates as provided in Paragraph 1 of this section shall become effective immediately upon the release of the announcement of such order.

Sec. 3. *Exemptions.* Upon application by any grower and submission of proof by him that by reason of such regulation he is unable to ship or have shipped for him as large a portion of the fruit grown by him and covered by such order as the percentage which the commodity committee permits to be shipped, the commodity committee shall issue to such grower a special certificate permitting him to ship or have shipped for him to a shipper a quantity of fruit equivalent to such difference.

Sec. 4. *Shipments in violation of regulations.* No person shall ship fruit in violation of this order except fruit shipped pursuant to Section 9 of Article VI and pursuant to special certificates issued as provided in Section 3 hereof. If the commodity committee institutes an investigation of a suspected violation of an order issued pursuant to Section 1 it may require the shipper to substantiate the grade and/or size of the fruit involved by a federal-state inspection certificate.

Sec. 5. *Export shipments.* Upon presentation of satisfactory documentary proof that fruit, other than pears, is to be exported to destinations exclusive of the continent of North America upon an outright sale basis, the appropriate commodity committee shall exempt such fruit from the operation of this article.

Sec. 6. *Inspection certificates.* In the event an order is issued pursuant to this article, the commodity committee may require shippers to submit federal-state inspection certificates setting out the sizes and grades of fruits.

Sec. 7. *Reports to Secretary.* The Secretary shall be immediately notified of any order issued under this article. Any order of the commodity committee adopted pursuant to the provisions of this article shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and any such order may at any time be cancelled or modified in any way by the Secretary.

ARTICLE VIII. REGULATION OF RAILROAD SHIPMENTS

SECTION 1. *Purposes.* In order to achieve an orderly flow of fruit to market, any commodity committee may, from time to time, issue an order regulating the carlot movement of fruit of any variety or varieties during any specified period from designated concentration points: *Provided, however,* That such order shall not be so issued unless the shipment of fruit covered by such order is being limited pursuant to Article VI or Article VII or unless the commodity committee determines at the date of the issuance of such order that the quantity of fruit covered thereby which is available and intended to be shipped during the season does not exceed the quantity of such fruit which it deems advisable to be shipped during such season; it being the purpose of this article to achieve an orderly day-to-day movement of fruit and not to limit the total shipments of fruit during the season or prevent the final shipment of any car from any concentration point. Such order shall state the determined number of carloads of such fruit expected to be shipped during the season and the determined number of carloads of such fruit deemed advisable for shipment during the season.

SEC. 2. *Limitation upon time cars held.* At the time of issuing any order pursuant to Section 1 of this article, the commodity committee shall announce the greatest number of days which any carload of fruit may be kept in any concentration point: *Provided, however,* That no carload of fruit may be held in such concentration points for more than four days.

SEC. 3. *Issuance of orders.* In the event a commodity committee, pursuant to Section 1 of this article, determines that the number of carloads of fruit of any variety or varieties expected to be shipped during any period of time from any or all concentration points designated by it exceeds the number of carloads of such fruit deemed advisable to be shipped, the commodity committee may issue an order limiting the number of carloads of such fruit that may be shipped from all such concentration points during such period. Such order shall state the determined number of carloads of such fruit expected to be shipped during the period and the determined number of carloads of such fruit deemed advisable for shipment during such period.

Sec. 4. *Order of shipments.* In the event an order is issued by the commodity committee pursuant to this article, the first carload of fruit covered by the order arriving at any concentration point shall be the first to be permitted to be shipped from all concentration points until the permissible number of carloads has been released. For this purpose the time of arrival of each such carload shall be either (a) the actual time of its arrival if such carload is not precooled at said concentration point, or (b) twenty-four hours after the arrival of said carload, if such carload is precooled at such concentration point.

Sec. 5. *Exceptions.* Fruit shipped in the following manner shall not be subject to regulation under this article:

1. If such fruit is destined for shipment to a foreign country exclusive of the continent of North America and proof thereof is submitted to the commodity committee;
2. If a carload contains less than one-half by billing weight of fruit covered by an order issued pursuant to this article;
3. If fruit is shipped pursuant to Section 9 of Article VI.

Sec. 6. *Change in priority.* Whenever any shipper has one or more carloads of fruit covered by an order issued pursuant to Section 2 of this article at a concentration point or points which have priority and hence at a given time may be shipped as provided in Section 4 of this article, and also has other carloads of such fruit at the same or other concentration points which do not have such priority, such shipper may designate the carload or carloads which are to have priority of shipment.

Sec. 7. *Water shipments.* Fruit shipped through concentration points destined to Pacific Coast ports for reshipment by water between points located in the continental United States shall not be subject to detention at such concentration points. During the period in which an order issued pursuant to this article is in effect, any quantity of fruit which a shipper ships by a water carrier between points located in the continental United States shall nine days prior to the date such shipment is expected to arrive at the port of destination, be deducted from the quantity of such fruit such shipper has available for shipment at any rail concentration point. Such shipper shall have a period of seventy-two hours during which he may apply such deductions to such carloads which he has available for shipment as he designates. Such shipper shall make such deductions from the fruit originating from the district which produced fruit originally shipped by such water carrier; but upon his application and proof to the commodity committee that the fruit from such district is not available, it may allow him to deduct such quantity of fruit from another district or districts.

Sec. 8. *Order prohibiting shipments of Bartlett pears.* 1. If the total number of carloads of Bartlett pears arriving at all said concentration points exceeds the advisable number of carloads to be shipped, as determined pursuant to Section 3 of this article, the commodity committee may, depending on the extent of such excess and upon affirmative vote of at least five members of said commodity committee, and subject to disapproval of the Secretary, issue an order prohibiting shippers during a period not to succeed forty-eight hours and not less than four days between the last day of one period and the first of another from shipping Bartlett pears to any or all concentration points.

2. For a period of forty-eight hours succeeding the termination of any period during which shipments are prohibited, no shipper shall ship Bartlett pears in excess of the quantity of such fruit such shipper shipped during a period of forty-eight hours prior to such period.

3. Upon application and satisfactory proof by a grower or shipper showing that because of such prohibition of shipments during the period in which shipments are prohibited or during the forty-eight hour period in which shipments are being limited following such period in which shipments are prohibited any or all of his Bartlett pears available and intended for shipment during such prohibition period and such succeeding forty-eight hour limitation period will become overripe and consequently unmarketable the commodity committee may issue such grower or shipper a certificate exempting him from such order.

4. Orders issued pursuant to this section and announcements required to be made hereunder shall be published in a newspaper or newspapers of general circulation to be selected by such commodity committee in the area where such fruit is produced and/or shipped or by such other or additional means as are reasonably calculated to bring such information to the attention of growers,

shippers and other interested parties. No order shall become effective sooner than twenty-four hours after notice thereof has been released, except that any order pertaining to the issuance of special certificates as provided in Paragraph 3 of this section shall become effective immediately upon the release of the announcement of such order.

5. The provisions of this section shall be applicable only to Bartlett pears.

Sec. 9. *Stop-orders.* Upon order of the commodity committee each shipper upon shipping a carload of fruit covered by such order shall file with the carrier for each such carload a stop-order, directing the carrier to stop such carload at any concentration point until an order of release is given by the commodity committee.

Sec. 10. *Distribution of shipments.* In the event any order is issued pursuant to Section 3 and Section 8 hereof, each shipper shall in so far as practically possible ship fruit for each grower whose fruit he handles in proportion to the supply he has in his possession and handles for all growers.

Sec. 11. *Rights of Secretary.* The Secretary shall be immediately notified of any order issued under this article. Any order of the commodity committee adopted pursuant to the provisions of this article shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and any such order may at any time be cancelled or modified in any way by the Secretary.

ARTICLE IX. SERVICE CHARGES AND DEDUCTIONS

Section 1. *Charges.* No shipper marketing deciduous fruit on consignment for any grower shall make charges for marketing such fruit which shall exceed 7 per cent of the gross delivered price or 10 per cent of the net price f. o. b. California, provided that on sales made outside of the continent of North America charges for foreign brokerage may be deducted in addition to the charges specified in this paragraph.

ARTICLE X. REPORTS, BOOKS AND RECORDS

Section 1. *Reports.* The shippers shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he may request, in a manner prescribed by him, and/or in accordance with forms of reports to be supplied by him, for the purposes of (a) assisting the Secretary in the furtherance of his powers and duties with respect to this agreement, and/or (b) enabling the Secretary to ascertain and determine the extent to which the declared policy of the act and the purposes of this agreement are being effectuated; such reports to be verified under oath. The Secretary's determination as to the necessity of and justification for the making of such reports, and the information called for thereby shall be final and conclusive.

Sec. 2. *Examination of books and records.* The shippers also severally agree that, for the same purposes, and/or to enable the Secretary to verify the information furnished him all their books and records pertinent to matters under investigation and the books and records of their affiliates and subsidiaries shall during the usual hours of business be subject to the examination of the Secretary. The Secretary's determination as to the necessity of and justification for any such examination shall be final and conclusive.

Sec. 3. *Keeping books and records.* The shippers and their respective affiliates and subsidiaries shall severally keep books and records which will clearly reflect all financial transactions of their respective businesses and the financial condition thereof.

Sec. 4. *Confidential information.* All information furnished the Secretary pursuant to this article shall remain confidential in accordance with the applicable general regulations, Agricultural Adjustment Administration.

Sec. 5. *Reports to committees.* For the purpose of enabling the control and commodity committees to perform their respective functions under this agreement, each shipper shall furnish to a confidential employee or employees designated respectively by the control and commodity committees, in such form and at such times and substantiated in such manner as shall be prescribed respectively by the control and commodity committees, information with respect to the quantity, kind and variety, grade and size of fruit, grower for whom such fruit is shipped, method of sale, routing and diversion of cars during such periods of time as designated respectively by the said committees. Such information and reports furnished the aforesaid employee or employees shall be confidential, and shall not be disclosed to any person except to the Secretary upon his request, except that the confidential employee or employees of the said committees or the Secretary may compile the information in such form as will not reveal the identity of individual informants and may make the compilation available to the public, and if any confidential employee shall disclose any information except as aforesaid, he shall be subject to immediate removal by the Secretary: *Provided,* That, information with respect to shipments and diversions to auction markets, including the name of the shipper, car number, contents and destination of any or all cars destined to an auction market, may be divulged to any commodity committee or the control committee.

The shippers agree to and do hereby authorize any and all railroad companies and transportation companies to furnish to the confidential employee of the control committee or the commodity committee, a record of cars ordered, the point of origin, the shipper, the car number, the destination, and any diversion of the shipment of any carload of fruit shipped, for the purpose of assisting in the orderly distribution of fruit. Such information and reports shall be confidential and shall not be disclosed to any person except to the Secretary upon his request and except that a confidential employee or employees of said committee or the Secretary may compile such information in such form as will not reveal the identity of individual shippers and may make the compilation available to the public.

ARTICLE XI. APPEALS

SECTION 1. *Appeals.* Any grower or shipper may petition the Secretary to review any order or decision of the control or a commodity committee or of any sub-committees thereof. Pending the disposition by the Secretary of any appeal, the parties shall abide by the order or decision of the control committee, unless the Secretary shall rule otherwise pending such disposition.

SEC. 2. *Action upon appeal.* Any such petition must be filed in writing setting forth the facts upon which it is based. The Secretary shall, if the facts stated show reasonable grounds for appeal, grant such petition and may revise or change in any manner any order or decision from which an appeal is taken.

ARTICLE XII. LICENSING

The contracting shippers hereby apply for and consent to licensing by the Secretary. Such licenses shall be in accordance with applicable regulations heretofore and hereafter prescribed by the

Secretary and approved by the President, and shall be subject to the rights and powers of the Secretary to modify or amend any license issued pursuant to the foregoing.

ARTICLE XIII. EFFECTIVE TIME AND TERMINATION

SECTION 1. *Effective time and termination.* This agreement shall become effective at such time as the Secretary may declare above his signature attached hereto, and this agreement shall continue in force, subject to termination as follows:

(a) The Secretary may at any time terminate this agreement as to all parties hereto by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine;

(b) The Secretary may at any time terminate this agreement as to any party signatory hereto, by giving at least one day's notice, by depositing the same in the mail and addressed to such party at his last known address;

(c) The Secretary shall terminate this agreement upon the request of contracting shippers who shipped not less than 67 per cent of the total shipments of all such shippers during the preceding season, or of contracting growers who produced and delivered for fresh shipment not less than 67 per cent of the total fruit produced and delivered for fresh shipment by all contracting growers during the preceding season, by giving notice in the same manner as provided in Paragraph (a) of this section;

(d) This agreement shall in any event terminate whenever the provisions of the act authorizing it cease to be in effect.

SEC. 2. *Effect of termination or amendment.* Unless otherwise expressly provided in the notice of termination or in the amendment, no termination or amendment of this agreement shall either (a) affect, waive, or terminate any right, duty, obligation or liability which shall have arisen or may thereafter arise in connection with any provision of this agreement; (b) release or forgive any violation of this agreement, occurring prior to the effective time of such termination or amendment; or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

SEC. 3. *Continuing power and duty.* If upon the termination of this agreement there are any obligations arising thereunder, the final accrual or ascertainment of which requires further acts by any party hereto or any committee hereunder or by any other person, the power and/or duty to perform such further acts shall continue notwithstanding such termination; *Provided,* That any such acts required, under the terms of this agreement, to be performed by any committee hereunder shall be performd by the members of such committee functioning at the effective time of such termination, or, if the Secretary shall so direct, by such other person, persons, or agency as the Secretary may designate.

ARTICLE XIV. DURATION OF IMMUNITIES

The benefits, privileges and immunities conferred by virtue of this agreement shall cease upon its termination, except with respect to acts done under and during the existence of this agreement; and the benefits, privileges and immunities conferred by this agreement upon any party signatory hereto shall cease upon its termination as to such party, except with respect to acts done under and during the existence of this agreement.

ARTICLE XV. AMENDMENTS

Section 1. *Proposals.* Amendments to this agreement may at any time be proposed by any party hereto, by any committee created hereunder, or by the Secretary.

Sec. 2. *Notice.* Notice of such proposed amendments shall be given to all contracting shippers and contracting growers either by publishing a summary thereof in a newspaper of general circulation, or by placing in the mail a copy thereof addressed to each contracting shipper and contracting grower at his last known address, except that the Secretary may give notice of any amendment proposed by him by sending a copy thereof to the control committee and issuing a press release.

Sec. 5. *Approval.* Upon the approval of any proposed amendment by contracting shippers who shipped not less than 67 per cent of the total quantity of the commodity shipped by all contracting shippers during the preceding season, or by contracting growers who produced and delivered for fresh shipment not less than 67 per cent of the total quantity of the commodity produced and delivered for fresh shipment by all contracting growers during the preceding season, the Secretary may approve such amendment, in which case it shall become effective at such time as the Secretary shall designate; but unless the Secretary shall find that the subject matter of the proposed amendment was included within the scope of the hearing held upon the agreement, or a prior amendment thereto, pursuant to the act, or if contracting shippers who during the preceding season shipped 20 per cent of the commodities shipped by all contracting shippers during such preceding season or contracting growers who during the preceding season produced and delivered for fresh shipment 20 per cent of the commodities produced and delivered for fresh shipment by all contracting growers during such season shall so request, the Secretary shall not approve any such amendment unless and until due notice and opportunity for hearing have been afforded in accordance with applicable general regulations of the Agricultural Adjustment Administration.

ARTICLE XVI. COUNTERPARTS

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute when taken together one and the same instruments as if all such signatures were contained in one original.

ARTICLE XVII. ADDITIONAL PARTIES

After this agreement takes effect any grower or shipper may become a party thereto by executing and filing with the Secretary a counterpart of this agreement. This agreement shall take effect as to such new contracting party at the time the duly executed counterpart is received by the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

ARTICLE XVIII. AGENTS

The Secretary may by designation in writing, name any person or persons, including officers or employees of the government, or bureaus or divisions of the United States Department of Agriculture, to act as his agents or agencies in connection with any of the provisions of this agreement, and he may authorize any such agent to designate or appoint persons, including officers or employees of the United States Department of Agriculture, to exercise or perform any or all of the powers and functions delegated to them as may be deemed necessary or advisable to accomplish the proper execution or performance of such powers and functions.

ARTICLE XIX. ANTI-TRUST LAWS

Any exemption from the anti-trust laws and/or any validation of any acts or things which would otherwise have been unlawful which may result from the execution of this agreement by the Secretary shall not extend or be construed to extend further than is absolutely necessary for the purpose of carrying out the provisions of this agreement.

ARTICLE XX. DEROGATION

Nothing contained in this agreement is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, and/or (b) in accordance with such powers to act in the premises whenever such action is deemed advisable.

ARTICLE XXI. LIABILITY OF COMMITTEE MEMBERS

No member of any committee created hereunder shall be held responsible in any way whatsoever to any one for errors in judgment, mistakes, or other acts, either of commission or omission, except for his own willful misfeasance or malfeasance.

ARTICLE XXII. SEPARABILITY

If any provision of this agreement is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this agreement and/or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

ARTICLE XXIII. SIGNATURE OF PARTIES

. . . .

[Effective July 20, 1935.]

APPENDIX B

MARKETING AGREEMENT FOR PACKERS OF WALNUTS GROWN IN CALIFORNIA, OREGON, AND WASHINGTON, WITH AMENDMENTS[1]

The parties to this agreement are the contracting packers of walnuts grown in California, Oregon, and Washington, and the Secretary of Agriculture of the United States.

Whereas, the Congress of the United States by the Agricultural Adjustment Act approved May 12, 1933, as amended, has declared that a national economic emergency exists due to the severe and increasing disparity between the prices of agricultural and other commodities and that there should be established and maintained such a balance between the production and consumption of agricultural commodities and such marketing conditions therefor, as will establish prices to the farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period described in said act; and

Whereas, pursuant to said act, the parties hereto, for the purpose of effectuating the declared policy of said act desire to enter into a marketing agreement under the provisions of Section 8 (2) of the act; and

Whereas, walnuts grown in the States of California, Oregon, and Washington and handled by the contracting packers enter into the current of interstate and foreign commerce;

Now, therefore, in consideration of the premises and of the mutual promises hereinafter contained, the parties hereto agree as follows:[2]

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[1] This document is a compilation of the marketing agreement and the amendments thereto. Amendments appear in italic type. All of the amendments printed herein were approved by the Secretary of Agriculture, August 25, 1934, and became effective at 12:01 A.M., eastern standard time, August 27, 1934.

[2] This is the preamble of the original marketing agreement; the preamble of the amendments is not printed herein.

ARTICLE I. DEFINITIONS

As used in this agreement, the following words and phrases shall be defined as follows:

1. "Secretary" means the Secretary of Agriculture of the United States of America.

2. (*a*) *"Packer" means any processor-distributor or unshelled walnuts.*

(*b*) *"Processor" means any person packing and handling unshelled walnuts.*

(*c*) *"Distributor" means any person, other than a processor, handling unshelled walnuts which have not been subjected, in the hands of a previous holder, to compliance with the surplus control provisions hereinafter contained.*

(*d*) *"Person" means individual, partnership, corporation, association, and any other business unit.*

3. (*a*) *"Packing" means bleaching, cleaning, grading, or otherwise preparing for market in any manner whatsoever.*

(*b*) *"Handling" means selling (through the channels of wholesale or retail trade) in the current of interstate or foreign commerce, or in competition with, or so as to burden, obstruct or otherwise affect interstate or foreign commerce.*

4. *"Foreign commerce" means commerce with any part of the world outside of the United States and its possessions.*

5. "Act" means the Agricultural Adjustment Act approved May 12, 1933, as amended.

6. "Walnuts" means only walnuts of the "English" (Juglans Regia) varieties, grown in the States of California, Oregon, or Washington. "Merchantable walnuts" means all unshelled walnuts meeting the specifications set forth in Exhibit A attached hereto or such additional specifications as may be prescribed by the control board pursuant to Section 3 of Article III and meeting the requirements of the federal standard. "Cull walnuts" means all lots of unshelled walnuts which are below the federal standard and which cannot be brought up to that standard by standard commercial practices.

7. "Pack" means a specific commercial classification of merchantable walnuts packed in accordance with the specifications given in Exhibit A attached hereto or in accordance with such addi-

tional specifications as may be prescribed by the control board pursuant to Section 3 of Article III.

8. "Sheller" means any party or parties, natural or artificial, engaged in the business of shelling walnuts for any purpose.

9. "Federal standard" means the regulation issued by the Secretary of Agriculture August 22, 1932, or any future amendment thereof, said regulation now providing:

* * * on and after September 1, 1933, the following standards, indicating percentage of deteriorated or unsound nuts, will be used in judging legality of nuts under the terms of the Federal Food and Drugs Act:

Variety	Unshelled Per cent
Walnuts	10

10. "Control board" or "walnut control board" means the control board created pursuant to Article II of this agreement.

11. "Crop year" means the twelve months from September 1 to the following August 31.

ARTICLE II. CONTROL BOARD

1. *Membership and organization.* (*a*) A control board is hereby established consisting of nine members. Eight members shall be appointed, subject to the disapproval of the Secretary, as follows:

Four members, and their successors, shall be selected by the California Walnut Growers Association, a co-operative association organized under the laws of California, with its principal place of business in Los Angeles, California; one member, and his successor, shall be selected by the North Pacific Nut Growers Co-operative, a co-operative association organized under the laws of Oregon, with its principal place of business in Dundee, Oregon; one member, and his successor, shall be selected by the majority vote of all other packers doing business in the State of Oregon signatory hereto; one member, and his successor, shall be selected by the majority vote of all other packers doing business in the State of California signatory hereto; and one member, and his successor, shall be selected by walnut growers in the State of California who do not market their walnuts through California Walnut Growers Association.

If any member or members of said board are not selected as provided in this article within ten days after the effective date hereof or within ten days after any vacancy occurs, then in such event the Secretary shall select such member or members. For the purpose of promptly placing upon the control board a representative of the walnut growers in California described in Paragraph (*a*) hereof, the Secretary may designate such member from three nominees, who are walnut growers in California not marketing their walnuts through the California Walnut Growers Association, submitted by the California Farm Bureau Federation and such member shall serve until said walnut growers described in Paragraph (*a*) hereof shall elect their representative.

(*b*) Each member selected shall promptly file a written acceptance of his appointment with the Secretary or his designated representative. In the event that all members of the board specified in Paragraph (*a*) hereof have not been selected within three days of the effective date of this agreement, the control board may organize and function upon the filing of such written acceptance by five or more members representing 75 per cent of the estimated tonnage available for shipment during the current crop year. The board shall elect such officers and adopt such rules for the conduct of its business as it may deem advisable.

(*c*) An additional member of the control board shall be selected by a three-fourths vote of the members selected pursuant to the provisions of Paragraph (*a*) hereof.

(*d*) The members of the control board shall serve without compensation but shall be allowed their necessary expenses, except that the member designated pursuant to Paragraph (*c*) shall be entitled to his expenses and reasonable compensation to be paid by the control board.

(*e*) The members of the control board shall select a chairman from their membership and all communications from the Secretary may be addressed to the chairman at such address as may from time to time be filed with the Secretary.

(*f*) *The control board may provide for voting by mail or telegram upon due notice to all members, and when any proposition is submitted for voting by such method, one dissenting vote shall prevent its adoption until submitted to a meeting of the control board.*

(*g*) *The control board shall authorize the designation by the* *appointing authority specified in Paragraph (a) hereof, in such manner as it may prescribe, of a substitute for any member of the control board. A substitute so designated shall be entitled, in the absence of the member for whom he is a substitute, to attend and participate in and exercise all of the rights of such member in meetings of the control board.*

2. *Duties and powers.* (*a*) The control board shall supervise the performance of this agreement and shall act as intermediary between the Secretary and the packer.

(*b*) The control board shall have full power and authority to make such expenditures as it deems necessary to carry out the provisions of this agreement.

(*c*) The control board shall cause to be kept complete and proper accounts of all receipts, disbursements, shipments of merchantable walnuts delivered to the board, and of all other business transactions conducted by it.

(*d*) *The books and records of the control board shall be open to inspection by the Secretary or his duly authorized representative.*

(*e*) The control board shall have full power and authority to appoint such employees as it may deem necessary and to determine the salaries and define the duties of any such employees.

(*f*) The control board shall hear and dispose of all questions and disputes whatsoever arising in connection with the performance of this agreement, subject only to the right of appeal hereinafter granted to the Secretary: *Provided,* That if a member of the control board or a packer represented by him be charged with a breach of this agreement, the Secretary may, upon application of any party in interest, disqualify such member from participating in the investigation and decision of such charge and shall appoint a disinterested individual to act as a substitute for the member disqualified.

(*g*) All decisions of the control board, except where otherwise specifically provided, shall be by a majority vote of the members who have qualified by filing their written acceptance and who are eligible to vote.

(*h*) *Any commercial business transactions within the power of the control board may be conducted by a corporation to be organized in such manner and with such powers as the control board* *may determine, and subject to the approval of the Secretary prior to completion of its organization: Provided, however, That the board of directors of such corporation shall be composed of the members of the control board or of other individuals selected in the manner herein provided for the selection of members of the control board, and that such corporation in the conduct of its business shall be subject to all of the provisions hereof applicable to the exercise by the control board of its powers and the performance of its duties and shall, by written notice filed with the Secretary, make itself subject to the provisions of this agreement to the same extent as the control board would be and as though all terms and provisions hereof applicable to the control board specifically referred to such corporation.*

ARTICLE III. CONTROL OF DISTRIBUTION

1. *Determination of total supply.* Each packer within five days after the effective date of this agreement, and thereafter on or before August 15 of each year, shall file with the control board a sworn statement of the merchantable walnuts held by him on the preceding August 1 showing the quantity, pack, and location thereof. The control board shall determine not later than 5 days after organization in 1933 and not later than September 1 of each succeeding year the estimated domestic supply of merchantable walnuts produced or to be produced that year and shall add thereto all stocks of merchantable walnuts of previous years' crops in possession of all packers on August 1. Such total is hereinafter designated as the "total supply of merchantable walnuts."

2. *Determination of salable percentage.* The control board shall determine, not later than 5 days after organization in 1933, and not later than September 1 of each succeeding year, the estimated consumptive demand, on the basis of prices not exceeding the maximum prices hereinafter specified, for the ensuing year in the United States. The control board shall then determine and promptly announce the proportion which said estimated consumptive demand bears to the total supply of merchantable walnuts. Such percentage shall be the "salable percentages." The control board or the Secretary may at any time during the crop year increase the salable percentage. The determination of the salable percentage or any in-

crease thereof by the control board shall require a two-thirds vote of the members of the control board who have been selected and qualified and shall be subject to disapproval by the Secretary.

3. Authorized packs. Except as otherwise provided in Article VII hereof for the sale of cull walnuts, packers shall not sell or offer for sale or ship any unshelled walnuts other than merchantable walnuts and all merchantable walnuts sold or offered for sale or shipped shall be of the packs specified in Exhibit A hereto attached; provided that the control board, on application of any packer, may prescribe additional pack specifications, and walnuts meeting such special pack specifications and meeting the requirements of the federal standard shall be deemed to be merchantable walnuts.

4. Individual supply and determination of surplus. Except as provided in Sections 7 and 11 of this article, no packer shall sell during any crop year any merchantable walnuts in excess of the salable percentage of his supply during such year. Said supply for each processor shall be the carry-over from preceding years held by him on August 1, plus, at any time during such crop year, the merchantable walnuts packed by him during such crop year up to that time, and, in the case of a distributor, all merchantable walnuts held by him on August 1 plus all merchantable walnuts acquired during the crop year, which have not been subjected, in the hands of a previous holder, to compliance with the surplus control provisions of this agreement. All merchantable walnuts in the supply of a packer at any time during a crop year in excess of the salable percentage of his supply at that time shall be deemed surplus walnuts, and the difference between the salable prcentage and 100 per cent shall be the surplus percentage. Such surplus walnuts shall be disposed of only as hereinafter provided, and except as provided in Sections 7 and 11 of this article and in Article V, no such surplus walnuts shall be permitted to enter the channels of trade as unshelled walnuts.

5. Delivery of surplus to control board. All surplus walnuts of each packer shall be delivered to the control board at such time and place as the control board may direct. A packer may substitute an equal weight of merchantable walnuts of any pack or quality for merchantable walnuts theretofore delivered by such packer to the control board and still held unsold by the control board, and, upon such exchange, appropriate adjustments shall be made in the *credits specified in Section 4 of Article V for the surplus walnuts delivered by that packer. All costs of such exchange shall be borne by the packers requesting the exchange.*

6. *Release of surplus on increase of salable percentage.* Upon any revision of the salable percentage each packer shall be permitted to sell a total quantity of his merchantable walnuts equal to such revised percentage and the control board shall release to each packer such quantity of his surplus walnuts as will be sufficient to permit that packer to sell a total quantity equal to such revised salable percentage of his merchantable walnuts.

7. *Sale of surplus by individual packer. At any time before December 15 of any year, a packer, having sold or contracted to sell any part or all of his surplus walnuts, shall be entitled to have re-delivered to him such surplus walnuts so sold or contracted for sale out of those previously delivered by him and still held unsold by the control board. Upon the re-delivery of such walnuts by the control board, the packer shall immediately pay to the control board the proceeds of such sale. The proceeds of such sales shall be the amount at which such sales were actually made (the selling price to be no less than the minimum prices established as herein specified) less a cash discount of 1.5 per cent. The packer making such payment to the control board shall be credited with the amount of such payment in lieu of a credit for surplus walnuts delivered. Such payment or a ratable proportion thereof (determined by relative weight) shall be refunded to the packer upon delivery by him to the control board at any time prior to December 31 of the same year, of a quantity of merchantable walnuts, of any pack or quality, to replace in whole or in part any lot of surplus walnuts theretofore sold by him. Upon such delivery appropriate adjustments shall be made in the credits specified in Section 4 of Article V for the surplus walnuts delivered.*

8. *Deficiency in surplus delivered to board.* At all times each packer must have delivered to or hold ready for delivery to the control board a quantity of merchantable walnuts equal to the surplus percentage of his merchantable walnuts, and in the event of any deficiency therein on the part of any packer, not covered by payments already made in accordance with the provisions of Section 7 hereof, such packer shall pay to the control board, in the manner specified in Section 7, cash representing the proceeds of

the sale of merchantable walnuts in a quantity equal to such deficiency.

9. *Refunds upon increase of salable percentage.* In the event the salable percentage is increased after a packer has deposited with the board cash in lieu of surplus walnuts, such packer shall be paid from such cash deposit in lieu of the release of surplus walnuts, an amount (not to exceed the amount deposited) representing the increase in salable percentage computed at the price at which such cash deposit had been made. If such deposit had been made at different prices, refund shall be made on the basis of each price to the extent of the quantity deposited at such price, beginning with the highest price. After any packer's cash deposits have been refunded in full, such packer shall be entitled to the release of surplus walnuts for the remainder, if any, of the increase in the salable percentage not represented by such cash refunds.

10. Disposition of cash deposits. Any money received by the control board as specified in Sections 7 and 8, remaining in its possession on or after January 1 of the crop year, shall be used by said board to purchase from any packers unsold walnuts held by them within their salable percentage of merchantable walnuts. If the fund is insufficient to purchase all of the walnuts remaining within the salable percentage of all packers, the board shall offer to purchase such walnuts ratably from packers in proportion to their said holdings on date of offer and at the values fixed by the control board for the credit of surplus walnuts as provided in Section 4 of Article V, less a cash discount of 1.5 per cent and brokerage of 2.5 per cent. In the event the salable percentage should be increased after the purchase by the control board of walnuts from the salable percentage of the several packers as herein provided and there should not remain in the possession of said board cash deposits in a sum sufficient to make refunds in accordance with Section 9 hereof, the packers by whom such walnuts were sold to the control board shall be required to rescind said sales and refund the proceeds thereof ratably in proportion to the amounts of their respective sales to the extent necessary to refund to the control board a total amount sufficient to enable the board to make the refunds required by said Section 9. All purchases of walnuts by the control board pursuant to the terms of this section shall be subject to the conditions of rescission and refund as above provided. Any money that may *remain at the close of the crop year after such purchases as herein provided have been completed shall become part of the holdings of the control board in the same manner and for the same purposes as the proceeds of surplus walnuts disposed of by said board.*

11. Postponement of settlement for surplus upon filing bond. A packer shall be excused from complying, between and including the dates of September 1 and December 15 of any crop year, with the requirements of Sections 4, 5, 7 and 8 of this article as to the selling of surplus walnuts or the times when he shall deliver to the control board surplus walnuts or shall pay to its proceeds of sales thereof, upon his filing with the control board a bond with a surety or sureties acceptable to the board, in such reasonable penal amount as the board shall direct, conditioned upon the delivery to the control board of his surplus walnuts and/or the payment to the control board of proceeds of the sale of his surplus walnuts in accordance with the other provisions of said sections, not later than December 15 of such crop year. The cost of such bond shall be borne by the packer filing same.

ARTICLE IV. CONTROL OF SALE PRICES

1. The control board shall each year, on or before October 15, establish, subject to the disapproval of the Secretary, minimum prices f. o. b. California or Oregon common shipping points, for each pack of merchantable walnuts, including such special packs as may be authorized, and no packer shall sell merchantable walnuts at less than such prices. The minimum prices so fixed for any year may be changed by the control board, subject to disapproval by the Secretary, the effective date of such change to be fixed by the board at a date at least five days after the decision. The establishment or change of minimum prices shall require a two-thirds vote of the members of the control board who have been selected and qualified. No packer shall offer merchantable walnuts of the new crop at firm prices until minimum prices for that crop year have been established by the control board, but until such minimum prices are established any packer may continue to sell merchantable walnuts of previous years' crops, within his salable percentage, at prices not less than those established for the preceding year.

2. Maximum prices. As long as the control board has any unsold stocks of merchantable walnuts, of any given pack, no packer is *permitted to sell merchantable walnuts of such pack at prices in excess of the following prices, f. o. b. California or Oregon common shipping points.*

California Packs

	Cents per lb.
No. 1 grade or No. 1 soft shell	16.5
Baby grade	11.5
Long type baby grade	12.5
Large budded, large Concords, large Franquettes, large Mayettes, and large Paynes	20
Large Eurekas	21
Medium budded	15
Fancy Concords, fancy Franquettes, fancy Mayettes, and fancy Paynes	16.5
Fancy Eurekas	19.5

Oregon and Washington Packs

Large Franquettes	21
Fancy Franquettes	17.5
Standard medium Franquettes	14.5
Large soft shells	20
Fancy soft shells	15
Standard or medium soft shells	12.5

The foregoing maximum prices may be changed by the control board, with the approval of the Secretary.

3. No packer shall make any discounts or allowances which will reduce any prices at which he has agreed to sell: *Provided, however,* That any packer may allow a buyer a total cash discount not exceeding 1.5 per cent; and *Provided further,* That any packer may allow to legitimate food brokers a total brokerage not exceeding 2.5 per cent.

4. No packer shall give to purchasers allowances for advertising not actually placed, or make allowances for unsupported claims for damage or shortage, or make allowances on unverified complaints of the quality of goods, or make shipments without charge in excess of the stated quantity ordered or contracted for. No packer shall, through combination sales or by any other device or subterfuge, permit any buyer to obtain walnuts at less than the minimum prices hereinbefore specified.

ARTICLE V. DISPOSAL OF SURPLUS

1. The control board shall have full power and authority to sell or dispose of any and all of its holdings of merchantable walnuts, subject to the following conditions:

(*a*) No such merchantable walnuts shall be sold as unshelled walnuts (except to shellers with proper safeguards to prevent their entry into the channels of trade as unshelled walnuts) in the United States except that the board may, in its discretion, distribute within the United States to charitable institutions for charitable purposes, surplus walnuts as donations or at prices less than the minimum prices herein specified, with proper safeguards to prevent such walnuts thereafter entering the channels of trade.

(*b*) In case such merchantable walnuts are sold for export to any foreign country including Canada, such sales shall be made only on execution of proper agreement to prevent re-importation into the United States, and in case of export to Canada they shall be sold only on the basis of a delivered price, duty paid.

(*c*) The control board shall not, prior to January 15 of any crop year, dispose of (other than by release to the respective packers) more than 50 per cent of the surplus walnuts delivered to it.

2. If the total supply, determined in accordance with the provisions of Section 1 of Article III, for the coming crop year be less than the estimated consumptive demand in the United States for such year, the control board shall release proportionately to each packer on September 1 of such year in so far as its holdings permit, such additional quantity of the actual merchantable walnuts delivered by each packer to and still held unsold by the control board as, when added to the estimated new crop, will be sufficient to supply the estimated consumptive demand for the coming year but in no case shall the control board release a greater quantity of its holdings than is represented by the difference between the estimated consumptive demand and the estimated new crop.

3. In the event the particular surplus walnuts previously delivered by any individual packer held unsold by the control board are less than the quantity which such packer is entitled to have released to him by reason of increase in the salable percentage or by reason of release of the carry-over, in whole or in part, as provided in Section 2 of this article, such deficit shall be made up by delivering to such packer from other stocks held unsold by said board, merchantable *walnuts of packs and qualities the same as or equivalent to the packs and qualities of surplus walnuts which had been delivered by that packer and disposed of by the board.*

4. All merchantable walnuts delivered to the control board shall be credited to the packer delivering same at such values as may be fixed by the control board, not less than the minimum prices for the respective packs delivered. Each packer shall also be credited with any money payments made by him in accordance with the provisions of Sections 7 and 8 of Article III. Such credits shall be made for the purpose of determining the interest of each packer in the holdings of the control board. The interest of each packer in the holdings of the control board shall be in the proportion of the net credits of such packer to the total net credits of all packers. For the purposes of this section "holdings of the control board" means the merchantable walnuts held by or for it and the net proceeds of the sale or other disposition thereof and the unexpended cash deposited with it as the proceeds of the sale of surplus walnuts by any packer. The control board shall distribute from time to time the proceeds of the sale of surplus walnuts ratably to the packers entitled thereto.

ARTICLE VI. CERTIFICATION OF SHIPMENTS

1. Every lot of merchantable walnuts shipped by a packer, including all lots delivered to or held for the control board, must be accompanied by a certificate. Said certificate, in case of walnuts grown in California, shall be issued by the Dried Fruit Association of California, but in case said association refuses to perform such service then said certificate shall be issued by any other inspector or inspectors designated by the control board. Certificates in the case of walnuts grown in Oregon and Washington shall be issued by inspectors designated by the control board. All such certificates shall show, in addition to such other requirements as the control board may specify, the identity of the packer, the quantity and pack of merchantable walnuts in such lot and that the walnuts covered by such certificate conform to the federal standard. Such certificate shall be issued only upon a showing that the packer requesting same has delivered or otherwise accounted for his surplus walnuts in accordance with the terms of this agreement: Provided, That during the portion of the crop year prior to December 15 such certificate *shall be issued without such showing to any packer who has filed a bond in accordance with the terms of Section 11 of Article III. The cost of such certificate shall be paid by the packer owning such lot.*

2. Copies of each such certificate shall be furnished the packer, and the control board.

ARTICLE VII. SALE OF CULL WALNUTS

Anything herein to the contrary notwithstanding, any packer may sell or deliver cull walnuts to any sheller: *Provided,* That, at the time each such shipment is made, the packer shall furnish the control board with a certificate, in form specified by the control board, detailing the amount of cull walnuts and to whom sold and delivered.

ARTICLE VIII. ASSESSMENTS

The control board is authorized to levy upon and to collect from all packers all assessments necessary to administer the provisions of this agreement. Such assessments shall be prorated on the basis of the entire tonnage upon which the salable percentage has been applied by each packer during the crop year for which such assessments are made. All assessments made hereunder shall be fixed and shall be used solely for the purpose of administering the provisions of this agreement. In the event excess money is collected by assessment during any year such excess shall be refunded pro rata at the end of that year by the control board to the packers paying said money, and such refund shall be made upon the same basis on which said assessments were levied and collected.

ARTICLE IX. DISTRIBUTION OF SURPLUS PROCEEDS

1. Each packer purchasing or receiving walnuts, other than merchantable walnuts, from growers or from any other parties (said growers and other parties being referred to in this article as "sellers"), if so requested by the seller, shall grade the walnuts so purchased or received in accordance with standard commercial practices for grading such purchases and receipts and shall correctly report to each seller the quantity of each such grade.

2. Any packer at his option may purchase all of the walnuts offered by any seller at an agreed price to be paid at such time or times as may be agreed upon or may accept walnuts from sellers

pursuant to any pooling plan under which all of the proceeds less deductions mutually agreed upon between packer and seller are returned to the sellers.

3. Any packer purchasing walnuts from a seller on any basis not specified in Section 2 of this article shall settle with such seller for the salable percentage then in effect, at such price as may be agreed upon between the packer and the seller, and in addition thereto shall, from time to time, pay to the seller, or his assignee, a just and reasonable proportion of the proceeds received by said packer from the sale or other disposition of the surplus of such walnuts.

4. The control board, or any committee appointed by it for such purpose, shall consider complaints filed with or presented to it by any seller objecting to the quantity and grades reported pursuant to Section 1 of this article and to the distribution offered by any packer of the proceeds of the sale or other disposition of any such surplus walnuts. In the event of any such complaint all information presented relating to said transaction shall be carefully considered by said board or committee and the packer involved shall abide by the decision of the board or committee.

ARTICLE X. REPORTS

1. Each packer shall file with the control board such statistical reports as said board shall from time to time consider necessary or desirable to the administration of this agreement.

2. The details of such reports shall be confidential and they shall not be revealed to any persons except the members of the control board and its duly authorized employees or to the Secretary: *Provided, however,* That the information obtained from such reports may be combined by the control board in the form of statistical studies or data that will not disclose the business transactions of any individual packer.

ARTICLE XI. INVESTIGATIONS AND APPEALS

1. Each packer shall maintain a system or systems of accounting which shall accurately reflect a true account and condition of its walnut business and of any affiliated or subsidiary companies or agencies. Each packer shall furnish such information to the Secretary as the Secretary may request including information on and in accordance with forms supplied by him.

2. Each packer's books and records, including the books and records of affiliated or subsidiary companies or agencies, shall, during usual hours of business, be subject to the examination of the Secretary for the purpose of assisting the Secretary in the furtherance of his duties with respect to this agreement, including the verification of any information which the Secretary may require any packer to give.

3. Except as may be necessary in the course of an investigation of a supposed breach of any provision of this agreement, any information obtained by the Secretary shall remain the confidential information of the Secretary, and shall not be disclosed by him except upon lawful demand by the President, by either house of the Congress, or any committee thereof, or by any court. The Secretary, however, may combine and publish the information obtained from packers in the form of general statistical studies or data.

4. If information shall come to the knowledge of any packer of the violation of any of the terms or conditions of this agreement by any other packer, the packer having such knowledge shall notify the control board of such violation by a written statement containing the charges and all available substantiating evidence.

5. If the control board upon receipt of any information from any source, shall find therein evidence that any packer is violating any terms or conditions of this agreement, it shall thereupon be the duty of said control board to investigate such suspected violation. The control board may call upon said packer to furnish a statement of the facts under oath. After due investigation, if it is the opinion of the control board that the agreement is being violated, it shall order such packer to discontinue such violation, and in the event of non-compliance by the packer with such order, it shall report such non-compliance to the Secretary, and shall make such further report regarding such violation to the Secretary as the control board deems advisable.

6. For verification of any report submitted at the request of the control board or in aid of any investigation with respect to suspected breach of this agreement by any packer, or with respect to any dispute arising out of this agreement, the control board may designate a reputable firm of certified public accountants to examine his books and records during the usual business hours, and report

upon the matters that shall have been specified in a direction to such accountants. Said direction to the accountants must specifically set forth the matters upon which a report is required and said accountants shall not reveal to the control board any other matters whatsoever disclosed by said examination.

7. An appeal in writing may be taken to the Secretary from any decision of the control board with reference to a dispute or investigation except as provided in Section 4 of Article IX within ten days after the decision is announced. Pending the disposition by the Secretary of any appeal the parties involved shall abide by the decision rendered by the control board, unless the Secretary shall rule otherwise pending such disposition. In the event of an appeal, it shall be the duty of the control board to forward to the Secretary the complete record of the board with regard to the matter.

8. The Secretary may terminate this agreement as to any packer for any such cause which the Secretary deems sufficient.

ARTICLE XII. MISCELLANEOUS

1. If any provision of this agreement is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this agreement and/or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

2. No member of the control board, nor any employee thereof, shall be held responsible individually in any way whatsoever to any packer or any other person for errors in judgment, mistakes, or other acts either of commission or omission as such member or employee, except for acts of dishonesty. The liability of the packers hereunder is several and not joint, and no packer shall be liable for the default of any other packer.

3. Nothing herein contained is or shall be construed to be in derogation or modification of the rights of the Secretary to exercise any powers granted to him by the act, and, in accordance with such powers, to act in the premises whenever he shall deem it advisable.

4. The Secretary may perform any duty or exercise any right hereunder through the agency or instrumentality of any person or organization (not a party to this agreement) designated by the Secretary.

5. The control board may from time to time by two-thirds vote

of its qualified members propose amendments to or modifications of this agreement, and any such amendment or modification shall become effective at the date designated by the control board upon approval by the Secretary: *Provided,* That such amendment shall not become effective, if within fifteen days after its proposal by the control board, packers signatory to the agreement representing ten per cent or more of the tonnage of merchantable walnuts packed during the preceding crop year file with the control board written notice of their disapproval of said amendment. Decisions of the control board upon proposed amendments shall be subject to the same right of appeal as provided in Article XI.

ARTICLE XIII. PARTIES AND TERMINATION

1. Any packer, as hereinabove in Article I defined, may become a party to this agreement on equal terms with the contracting packers by execution and deposit with the Secretary of a counterpart of this agreement.

2. This agreement shall become effective at such date as the Secretary may declare above his signature attached hereto and shall continue in force until terminated in one of the following ways:

(*a*) The Secretary may at any time terminate this agreement by giving notice by means of a press release or in any other manner which the Secretary may determine.

(*b*) Upon the written request of two or more packers who shipped during the preceding crop year more than 70 per cent of the total tonnage of merchantable walnuts shipped in said crop year, the Secretary shall, by notice in writing sent by registered mail, addressed to the control board, on or before the 20th day of any month, terminate this agreement as of the end of such month.

(*c*) This agreement shall in any event terminate when those provisions of the act which authorize this agreement shall cease to be in effect.

3. The benefits, privileges, and immunities conferred by virtue of this agreement shall cease upon its termination, except with respect to acts done prior thereto; and the benefits, privileges, and immunities conferred by virtue of this agreement upon any party signatory hereto, shall cease at its termination as to such party, except with reference to acts done prior thereto.

4. Each packer hereby applies for and consents to licensing by the Secretary pursuant to the act subject to terms and conditions not inconsistent with this agreement.

This agreement may be executed in multiple counterparts. Each packer becoming a party to this agreement by execution of a counterpart shall sign and deposit with the Secretary said counterpart and, if a corporation, shall deposit together with said signed counterpart a certified copy of a resolution of its board of directors authorizing such signing and delivery. This agreement, together with all executed counterparts, shall constitute one and the same instrument as if all signatures were contained in one original.

[Signature of parties]

[Effective October 9, 1933.
Amendments effective August 25, 1934.]

APPENDIX C

SECTIONS OF THE AGRICULTURAL ADJUSTMENT ACT COVERING MARKETING AGREEMENTS AND ORDERS

(As amended by Public No. 320, 74th Congress, approved August 24, 1935)[1]

[(2)] Sec. 8b. [After due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, in the current of or in competition with, or so as to burden, obstruct, or in any way affect interstate or foreign commerce.] *In order to effectuate the declared policy of this title, the Scretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.* The making of any such agreement shall not be held to be in violation of any of the anti-trust laws of the United States, and any such agreement shall be deemed to be lawful: *Provided,* That no such agreement shall remain in force after the termination of this act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under Section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements.

[(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing Acts of Congress or regulations pursuant thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof. The Secretary of Agriculture may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the Secretary suspending or revoking any such license shall be final if in accordance with law. Any such person engaged in such handling without a license as required by the Secretary under this section shall be subject to a fine of not more than $1,000 for each day during which the violation continues.]

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[1] Throughout the text of this document italics are used to indicate matter added by the 74th Congress by way of amendment to the Agricultural Adjustment Act, Public No. 10, 73 Cong., 48 Stat. L. 31 (1933), as previously amended. In instances where the language was stricken or changed, heavy black brackets are used to indicate the deleted matter.

ORDERS

Sec. 8c. (1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in Sub-section (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

(2) Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except products of naval stores), or to any regional, or market classification of any such commodity or product: Milk, fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning), soybeans and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin).

(3) Whenever the Secretary of Agriculture has reason to believe

that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in Sub-section (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

TERMS—MILK AND ITS PRODUCTS

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in Sub-section (7)) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

> *(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: Provided, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be*

> *separate and apart from any other approval or disapproval provided for by this section; or*
>
> *(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;*

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their production of milk during a representative period of time.

(C) In order to accomplish the purposes set forth in Paragraphs (A) and (B) of this Sub-section (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with Paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in Paragraph (B) of this Sub-section (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a co-operative marketing association, qualified as provided in Paragraph (F) of this Sub-section (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this Sub-section (5) is intended or

shall be construed to prevent a co-operative marketing association qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all of its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to Paragraph (A) of this Sub-section (5) for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

Terms—Other Commodities

(6) In the case of fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning) and their products, tobacco and its products, vegetables (not including vegetables, other than asparagus, for canning) and their products, soybeans and their products, and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin), orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in Subsection (7)) no others:

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size, or quality thereof, produced during any specified period or periods, which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof, during any specified period

or periods, under a uniform rule based upon the amounts produced or sold by such producers in such prior period as the Secretary determines to be representative, or upon the current production or sales of such producers, or both, to the end that the total quantity thereof to be purchased or handled during any specified period or periods shall be apportioned equitably among producers.

(*C*) *Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.*

(*D*) *Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers and handlers thereof.*

(*E*) *Establishing, or providing for the establishment of, reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.*

Terms Common to All Orders

(7) *In the case of the agricultural commodities and the products thereof specified in Sub-section* (2) *orders shall contain one or more of the following terms and conditions:*

(*A*) *Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.*

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining their powers and duties, which shall include only the powers:

> *(i) To administer such order in accordance with its terms and provisions;*
>
> *(ii) To make rules and regulations to effectuate the terms and provisions of such order;*
>
> *(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and*
>
> *(iv) To recommend to the Secretary of Agriculture amendments to such order.*

No person acting as a member of an agency established pursuant to this paragraph (C) shall be deemed to be acting in an official capacity, within the meaning of Section 10 (g) of this title, unless such person receives compensation for his personal services from funds of the United States.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in Sub-sections (5), (6), and (7) and necessary to effectuate the other provisions of such order.

Orders with Marketing Agreement

(8) Except as provided in Sub-section (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding co-operative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to Section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this Sub-section (8) shall become effective until

the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: Provided, That no order issued pursuant to this sub-section shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

ORDERS WITH OR WITHOUT MARKETING AGREEMENT

(9) *Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding co-operative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines:*

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding

co-operative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

(10) No order shall be issued under this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held. No order shall be issued under this title prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity or product covered by such marketing agreement.

(11) (A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional production areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional markeitng areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

Co-operative Association Representation

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any co-operative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such co-operative association of producers.

(13) (A) No order issued under Sub-section (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

Violation of Order

(14) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who

violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than $50 or more than $500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: Provided, That if the court finds that a petition pursuant to Sub-section (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this sub-section for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to Sub-section (15).

PETITION BY HANDLER AND REVIEW

(15) (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The district courts of the United States (including the Supreme Court of the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this Sub-section (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to Section 8a (6) of this title. Any

proceedings brought pursuant to Section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this Sub-section (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this Sub-section (15).

(16) (A) The Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

(B) The Secretary shall terminate any marketing agreement entered into under Section 8b, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: Provided, That such majority have, during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

(C) The termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

(17) The provisions of this section, Section 8d, and Section 8e applicable to orders shall be applicable to amendments to orders: Provided, That notice of a hearing upon a proposed amendment to any order issued pursuant to Section 8c, given not less than three

days prior to the date fixed for such hearing, shall be deemed due notice thereof.

[(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade practices and charges, and to keep such systems of accounts, as may be necessary for the purpose of Part 2 of this title.]

Books and Records

Sec. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the anti-trust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this sub-section, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such reports was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

(2) Notwithstanding the provisions of Section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a

party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

DETERMINATION OF BASE PERIOD

Sec. 8e. In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in Section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the post-war period, August 1919-July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture.

[(5)] *Sec. 8f.* No person engaged in the storage in a public warehouse of any basic agricultural commodity in the current of interstate or foreign commerce, shall deliver any such commodity upon which a warehouse receipt has been issued and is outstanding, without prior surrender and cancellation of such warehouse receipt. Any person violating any of the provisions of this sub-section shall, upon conviction, be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both. [The Secretary of Agriculture may revoke any license issued under Subsection (3) of this section, if he finds, after due notice and opportunity for hearing, that the licensee has violated the provisions of this sub-section.]

STATE AND LOCAL COMMITTEES

. . . .

Sec. 10. [(b) The Secretary of Agriculture is authorized to establish, for the more effective administration of the functions vested in him by this title, state and local committees, or associations of producers, and to permit co-operative associations of producers, when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of rental or benefit payments.]

(b) (1) The Secretary of Agriculture is authorized to establish, for the more effective administration of the functions vested in him by this title, State and local committees, or associations of producers, and to permit co-operative associations of producers, when in his judgment they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of payments authorized to be made under Section 8. The Secretary, in the administration of this title, shall accord such recognition and encouragement to producer-owned and producer-controlled co-operative association as will be in harmony with the policy toward co-operative associations set forth in existing acts of Congress, and as will tend to promote efficient methods of marketing and distribution.

(2) *Each order issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a co-operative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such co-operative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the*

collection of such handler's pro rata share of expenses. The several district courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

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Export Benefit Payments

Sec. 32. There is hereby appropriated for each fiscal year beginning with the fiscal year ending June 30, 1936, an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws during the period January 1 to December 31, both inclusive, preceding the beginning of each such fiscal year. Such sums shall be maintained in a separate fund and shall be used by the Secretary of Agriculture only to (1) encourage the exportation of agricultural commodities and products thereof by the payment of benefits in connection with the exportation thereof or of indemnities for losses incurred in connection with such exportation or by payments to producers in connection with the production of that part of any agricultural commodity required for domestic consumption; (2) encourage the domestic consumption of such commodities or products by diverting them, by the payment of benefits or indemnities or by other means, from the normal channels of trade and commerce; and (3) finance adjustments in the quantity planted or produced for market of agricultural commodities. The amounts appropriated under this section shall be expended for such of the above-specified purposes, and at such times, in such manner, and in such amounts as the Secretary of Agriculture finds will tend to increase the exportation of agricultural commodities and products thereof, and increase the domestic consumption of agricultural commodities and products thereof: *Provided,* That no part of the funds appropriated by this section shall be expended pursuant to clause (3) hereof unless the Secretary of Agriculture determines that the expenditure of such part pursuant to clauses (1) and (2) is not necessary to effectuate the purposes of this section: *Provided further,* That no part of the funds appropriated by this section shall be used for the payment of benefits in connection with the exportation of unmanufactured cotton.

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Existing Agreements and Licenses

Sec. 38. Nothing contained in this act shall (a) invalidate any marketing agreement or license in existence on the date of the enactment hereof, or any provision thereof, or any act done pursuant thereto, either before or after the enactment of this act, or (b) impair any remedy provided for on the date of the enactment thereof for the enforcement of any such marketing agreement or license, or (c) invalidate any agreement entered into pursuant to Section 8 (1) of the Agricultural Adjustment Act prior to the enactment of this act, or subsequent to the enactment of this act in connection with a program the initiation of which has been formally approved by the Secretary of Agriculture under such Section 8 (1) prior to the enactment of this act, or any act done or agreed to be done or any payment made or agreed to be made in pursuance of any such agreement, either before or after the enactment of this act, or any change in the terms and conditions of any such agreement, or any voluntary arrangements or further agreements which the Secretary finds necessary or desirable in order to complete or terminate such program pursuant to the declared policy of the Agricultural Adjustment Act: *Provided,* That the Secretary shall not prescribe, pursuant to any such agreement or voluntary arrangement, any adjustment in the acreage or in the production for market of any basic agricultural commodity to be made after July 1, 1937, except pursuant to the provisions of Section 8 of the Agricultural Adjustment Act as amended by this act.

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